

Exhibit 1

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ASSOCIATION

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

MILLENNIUM TOWER ASSOCIATION, a
California nonprofit mutual benefit corporation,

Plaintiff,

v.

MISSION STREET DEVELOPMENT LLC, a
Delaware Limited Liability Company; MISSION
STREET HOLDINGS LLC, a Delaware Limited
Liability Company; MILLENNIUM PARTNERS
MANAGEMENT LLC, a New York Limited
Liability Company; MILLENNIUM PARTNERS
LLC, a New York Limited Liability Company;
MILLENNIUM PARTNERS I, INC., a New York
Corporation; CHRISTOPHER M. JEFFRIES, an
individual; PHILIP E. AARONS, an individual;
PHILIP H. LOVETT, an individual; SEAN
JEFFRIES, an individual; JOHN LUCIANO, an
individual; WEBCOR CONSTRUCTION, INC., an
unknown business entity; WEBCOR
CONSTRUCTION LP, dba WEBCOR BUILDERS,
a California Limited Partnership; HANDEL
ARCHITECTS LLP, a New York Limited Liability

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

04/16/2018
Clerk of the Court

BY:EDNALEEN ALEGRE

Deputy Clerk

Case No. CGC-17-557830

FIFTH AMENDED COMPLAINT FOR:
1) VIOLATION OF CAL. CIV. CODE
§ 895 ET SEQ.;
2) NEGLIGENCE;
3) BREACH OF EXPRESS
WARRANTIES;
4) BREACH OF IMPLIED
WARRANTIES;
5) STRICT LIABILITY;
6) NEGLIGENT
MISREPRESENTATION;
7) FRAUDULENT
MISREPRESENTATION;
8) FRAUDULENT CONCEALMENT;
9) BREACH OF FIDUCIARY DUTY;
10) VIOLATION OF CAL. BUS. &
PROF. CODE § 17200 ET SEQ.;
11) INVERSE CONDEMNATION;
12) TRESPASS;
13) NUISANCE;
14) VIOLATION OF CAL. CIV. CODE
§ 832; AND

Partnership; TREADWELL & ROLLO, INC., an unknown business entity; T & R CONSOLIDATED, INC., a California Corporation and successor in interest to TREADWELL & ROLLO; LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC., a New Jersey Corporation and successor in interest to TREADWELL & ROLLO; DESIMONE CONSULTING ENGINEERS LLC, a Delaware Limited Liability Company; DESIMONE CONSULTING ENGINEERS, PLLC, a California Professional Limited Liability Company; TRANSBAY JOINT POWERS AUTHORITY, a public entity; ARUP NORTH AMERICA LIMITED, a United Kingdom Corporation; TRANSBAY TOWER LLC, a Delaware Limited Liability Company; BOSTON PROPERTIES, INC., a Delaware Corporation; CLARK-HATHAWAY DINWIDDIE, a Joint Venture; and DOES 1 through 100,

Defendants.

15) VERIFIED PETITION FOR WRIT OF MANDATE.

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. The Millennium Tower, a 419-unit luxury condominium project at 301 Mission Street in San Francisco, was the tallest residential high rise on the West Coast when it opened in 2009. Shimmering like a translucent 58-story crystal, this landmark structure attracted a diverse community of more than a thousand residents. Urban professionals welcomed the opportunity to live minutes from the financial district's hive of corporate headquarters; retirees and empty-nesters traded the equity in their suburban homes for the panoramic vistas of a waterfront skyscraper; and young families with children embraced the unique experience of a vertical neighborhood. With units averaging nearly \$2 million, the tower's developer, Millennium Partners, generated in excess of \$750 million in sales between 2009 and 2013.¹

2. To the dismay of those who sank so much of their life savings into the Millennium Tower, the Tower itself is now sinking—and has been for years, even before the first unit was sold in 2009. As much of the Bay Area and beyond has come to learn, Millennium Partners erected this glamorous building on an improperly designed and constructed foundation system, then looked the other way as the building was further besieged by other construction defects and negligent construction practices. By the time it debuted as “the luxury benchmark for San Francisco city living,”² the high-rise tower had already sunk more than 8 inches into the mud, sand, and clay on which it was built. And the sinking continues unabated. The Tower has since dropped another 8 inches, bringing it now 16 inches closer to the “diverse tapestry of arts, culture and culinary delights”³ that originally drew its residents to this vibrant South of Market neighborhood. As the Tower has sunk, it has also tilted. The precast concrete floors are now non-level, and at the top, where a penthouse unit sold for \$9.8 million, the tower leans by more than 12 inches.

¹ J.K. Dineen, *Millennium Tower in San Francisco is a \$750M sellout*, S.F. Bus. Times (Apr. 5, 2013), <http://www.bizjournals.com/sanfrancisco/print-edition/2013/04/05/millennium-tower-in-san-francisco-is.html>.

² Millennium Partners, <http://millenniumptrs.com/about-mp/> (last visited Mar. 28, 2017).

³ *Id.*

3. But those who knew of the high rise’s troubles kept it secret for years, and two parties even memorialized their agreement to keep all exchanged documents and information confidential.⁴ Millennium Partners and the Transbay Joint Powers Authority (“TJPA”), which was preparing to build an underground and above-ground transit center (“Transit Center”) on an adjacent site, entered into a bilateral confidentiality agreement covering all documents and information exchanged. Rejecting transparency and accountability, Millennium Partners and the TJPA agreed that the “[d]ocuments and information” exchanged about the Property and the Transit Center were proprietary and confidential.⁵ The Millennium Tower Association (“HOA”)—the not-for-profit association responsible for the key building systems—was shut out, and the truth about the mounting problems was hidden, and stayed hidden, for many years.

4. For its part, Millennium Partners is an experienced New York-based real estate development conglomerate of individuals and entities that boasts of having developed more than 2,900 luxury condominiums, eight five-star hotels, including the 40-story Four Seasons near Moscone Center, two extended-stay luxury hotels, 1,200,000 square feet of office space, and 1,000,000 square feet of retail space, among other developments.⁶ It claims to own and operate an impressive portfolio worth over \$4 billion.⁷ In other words, purchasers of Millennium Tower units had every reason to believe that they were placing their faith in a developer with the resources and know-how to properly design and construct a building whose height was not a moving target. And, in addition to the residents who bought into the dream of a world-class property built to the highest standards, the other inhabitants of bustling SoMa reasonably trusted that the slender skyscraper towering above them was constructed responsibly.

⁴ The March 17, 2010 Confidentiality Agreement replaced and superseded a February 26, 2010 agreement in its entirety, and the parties to the March 17, 2010 Confidentiality Agreement agreed that the “February 26, 2010 agreement shall have no further force and effect.”

⁵ Confidentiality Agreement between Millennium Partners and the TJPA (March 17, 2010).

⁶ Millennium Partners, <http://millenniumptrs.com/about-mp/> (last visited Mar. 28, 2017).

⁷ *Id.*

5. Christopher Jeffries and his son Sean Jeffries directed and led the development of Millennium Tower. Christopher Jeffries is a founder of certain of the related Millennium Partner entities and retains the largest ownership interest in several of the entities.⁸ Even with his vast holdings, Christopher Jeffries himself makes the final decisions about the Millennium Tower and speaks with authority about the causes of its sinking and tilting. Christopher Jeffries was the primary spokesperson for Millennium Partners at its September 20, 2016 press conference at City Hall, where he insisted that “[Millennium Partners] did this building the right way.”⁹ The co-founders of certain of the related Millennium Partners entities, Philip Aarons and Philip Lovett, also had significant involvement overseeing and managing the development of the Millennium Tower, but, as Mr. Aarons testified, “the final decisions at Millennium are made by Chris Jeffries.”¹⁰

6. Other day-to-day responsibilities for the Millennium Tower’s development fell to Sean Jeffries, leader of West Coast development for Millennium Partners and the entity that Millennium Partners created to oversee the project at 301 Mission Street—Mission Street Development. As part of a strategic nationwide push, Sean Jeffries had expanded the West Coast office to complete various projects valued at over a billion dollars, including the Millennium Tower.¹¹ Vice President John Luciano, whom Millennium Partners installed on the HOA board from 2009 to 2016, joined Sean Jeffries on the West Coast.

7. After the confidential exchange of documents over the Millennium Tower’s worsening condition, both Sean Jeffries and John Luciano kept the alarming data regarding the Tower’s sinking from the HOA and continued selling the condominium units to unsuspecting homeowners. This subterfuge went on for years as Millennium Partners, and

⁸ Aug. 12, 2010 Philip Aarons Dep. 9:11-13 & 43:17-21, cited as Ex. 5 to Plaintiff’s Notice of Filing Exhibits in Support of Plaintiffs’ Responses to Defendants’ Motions for Summary Judgment and Motions for Judgment on the Pleadings, *Altenel, Inc. v. Millennium Partners, LLC, et al.*, No. 1:11-cv-22806-KMW, ECF No. 338-5.

⁹ Associated Press, *San Francisco Skyscraper Is Leaning - And Sinking*, Popular Mechs. (Oct. 24, 2016), <http://www.popularmechanics.com/technology/infrastructure/a23521/san-francisco-skyscraper-is-leaningand-sinking/>.

¹⁰ Aug. 12, 2010 Philip Aarons Dep. 42:18-21, *supra* note 8.

¹¹ Kristine Carber, *The Feel-Good Developer*, Gentry Wealth (Summer 2012).

1 specifically Sean Jeffries, kept receiving regular reports that the Millennium Tower was
2 sinking and tilting but never shared those reports with the HOA.

3 8. Sean Jeffries, acting on behalf of Millennium Partners, helped to make sure
4 that no other entity shared that information, either. The TJPA, for instance, had been granted
5 certain easements to the Millennium Tower property, which the agency needed to proceed
6 with its excavation activities. Sean Jeffries signed the original October 10, 2008 easement
7 agreement as the authorized representative of Mission Street Development. After
8 responsibility for the Millennium Tower transferred from Mission Street Development to the
9 HOA, the easement agreement had to be updated in 2011 to reflect that change; the
10 amendment required the TJPA to provide monitoring data, which would have included the
11 building's sinking and tilting, to Mission Street Development and the HOA. Sean Jeffries
12 signed the amended easement agreement and designated himself as the HOA's "authorized
13 representative"—thereby intercepting the TJPA's data before it could ever reach the HOA
14 members not employed by Millennium Partners.¹² On information and belief, the HOA
15 alleges that Sean Jeffries was not an official member of the board of directors of the HOA at
16 the time of signing and was not authorized by the HOA to sign or receive the monitoring data
17 on behalf of the HOA.

18 9. Long after construction was complete and all units had been sold, Sean Jeffries
19 continued to involve himself with the building's management and attend periodic HOA
20 meetings. In early 2014, after the Tower had sunk over 13 inches, and residents noticed signs
21 of sidewalk settlement, Sean Jeffries wrote to the HOA's president to propose quarterly
22 meetings between the HOA and Millennium Partners. Sean Jeffries also agreed to provide
23 updates on the adjoining TJPA construction site, where the Transit Center was still under
24 construction, including substantial underground work to accommodate the extension of the
25 Caltrain line and the future High Speed Rail project.

26 10. In a February 2014 update to the HOA, Sean Jeffries professed ignorance
27

28 ¹² At least two board members were residents not employed by Millennium Partners at the time
the September 1, 2011 First Amendment to the Easement Agreement was signed.

1 about the Tower's troubles: "I have not been made aware to date of any information that gives
 2 us concern for the safety of the building or any significant impact on the structure."¹³ But
 3 Sean Jeffries was aware. He knew that the Tower was sinking and tilting (and had already
 4 sunk approximately 13 inches by that time), and he knew that excavation for the TJPA's
 5 underground "train box" and the associated construction were significantly impacting the
 6 Tower. Rather than alert those who had the most to lose, Sean Jeffries continued to hide this
 7 information from the HOA.

8 11. The TJPA and the private parties involved in the development of the Transit
 9 Center and the skyscraper across the street—the Transbay Tower, also known as the
 10 Salesforce Tower (the "Salesforce Tower")—likewise knew that their construction activities
 11 would affect the Millennium Tower and that its excavation activities alone would cause the
 12 Tower to sink further. As a condition of the easement permitting access to the Millennium
 13 Tower, the TJPA agreed that "[t]he Support System and the Transit Center shall be designed
 14 and constructed to stabilize the soil beneath the [property], prevent the material movement
 15 and/or settlement of the [property] and provide for the structural support, integrity and safety
 16 of the [property] during and after TJPA's construction of the Transit Center"¹⁴

17 12. But instead of preventing damage to the Millennium Tower, the construction
 18 of the Transit Center and the Salesforce Tower exacerbated the problems with the Millennium
 19 Tower. Both the TJPA's construction activities at the Transit Center and the construction
 20 activities at the Salesforce Tower, including dewatering, excavation, and the installation of
 21 tiebacks on land adjacent to the Millennium Tower and the Millennium Tower property itself,
 22 have led to increased sinking and tilting of the Millennium Tower. The TJPA's data shows
 23 that as demolition, dewatering, and other construction activities for the Transit Center and
 24 Salesforce Tower began, the rate of settlement and tilting of the Tower increased. The
 25 construction activities at the Salesforce Tower have also contributed to one or more breaches
 26 of the shoring wall at the Transit Center site and inadequate performance of the shoring wall

27 _____
 28 ¹³ Letter from Sean Jeffries (Millennium Partners) to Jeff Peters (HOA) (Feb. 28, 2014).

¹⁴ October 10, 2008 Easement Agreement between the TJPA and Mission Street Development.

1 system at the Salesforce Tower site.

2 13. The TJPA and Salesforce Tower developers, through their massive, ill-planned
3 construction operations, and Millennium Partners, with its defective design and construction,
4 all contributed to the myriad problems plaguing the Millennium Tower. These problems were
5 compounded by the active concealment by Millennium Partners and its employees, and the
6 apparent complicity of the TJPA.

7 14. Other factors, including inadequate garage construction and waterproofing,
8 defective windows, curtain wall corrosion and water intrusion, inter-unit odor transmission,
9 cracks, and alignment issues, have also taken a toll on the livability of the Millennium Tower.
10 Millennium Partners bills the property as “rare” and “an address like no other.” And it is
11 indeed rare and unique, but now mainly because failures of this magnitude in planning,
12 design, development, and construction are almost unheard of in contemporary high rises.

13 15. Burdened with design and construction defects, and further battered by the
14 TJPA construction activities on its land and the adjoining property, the Millennium Tower has
15 continued its slow descent into the prehistoric clay on which it was built. Unable to initially
16 detect the sinking and tilting on its own—and kept from the truth by the parties that did
17 know—the HOA learned far too late of the conditions jeopardizing the Millennium Tower.
18 Had it known sooner, the HOA could have demanded that the developer implement a retrofit,
19 or it could have sought to halt other activities contributing to the damage, such as those of the
20 TJPA.

21 16. Millennium Partners and the TJPA now each publically places unequivocal
22 blame on the other. Regardless of who contributed most to the damage, one fact is
23 indisputable: Both Millennium Partners and the TJPA possessed the damning data but did
24 nothing with it. Neither tried to stem the sinking; neither sought to alert the HOA.

25 17. And now, in an attempt to show that adjoining construction sites are the
26 exclusive cause of the sinking, Millennium Partners has sought an order to stop the TJPA
27 from any final dewatering. Forced to confront its own culpability, Millennium Partners
28 instead points the finger at others, despite sitting on the data for years and never seeking to

1 stop the dewatering when it would have made a difference.

2 18. The victims of this debacle are the residents and the HOA, who placed their
3 trust and confidence—and over half a billion dollars—in the hands of Millennium Partners.
4 With this Complaint for strict liability, breach of warranties, fraud, and negligence, as well as
5 violations of the California Civil Code and California Business and Professions Code, among
6 other claims, the HOA seeks what it plainly deserves—a safe home free from continued
7 sinking and tilting, the same home that its members thought they were buying before the truth
8 was revealed.

9 II. THE PROPERTY

10 19. The Millennium Tower development is located at 301 Mission Street in San
11 Francisco and comprises three primary structures: a 58-story tower (the “Tower”), an adjacent
12 12-story building on a reinforced concrete podium that includes residences and common areas
13 (the “Podium”), and a five-level subterranean garage (the “Garage”) (collectively, the Tower,
14 the Podium, and the Garage constitute the “Millennium Tower” or “Property”). The
15 Millennium Tower consists of 419 separate residential condominiums and two commercial
16 units, forming a mixed-use condominium project.

17 20. The underlying real property is a rectangular lot measuring approximately
18 183.5 feet by 275 feet, a total area of approximately 50,463 square feet. The Property is
19 bounded by Mission Street to the northwest, Fremont Street to the southwest, and Beale Street
20 to the northeast. The future Transit Center abuts the Property to the southeast, and the
21 temporary and permanent easements granted to the TJPA encroach five feet onto the Property
22 on the southeast side. The Salesforce Tower is directly across Fremont Street from the
23 Property at 415 Mission Street, with the construction activities relating to the Salesforce
24 Tower Defendants extending below Fremont Street on the land adjoining the Millennium
25 Tower and on the Property itself.

26 21. The Millennium Tower is more fully described in the Map entitled “Final Map
27 4146 A 420 Unit Residential Unit and 8 Commercial Unit Mixed Use Condominium Project”
28 filed for record in the Official Records of the City and County of San Francisco, State of

1 25. The HOA has the sole and exclusive right and duty to manage, operate,
2 control, repair, replace, and restore the Millennium Tower, including the right to enter into
3 contracts to accomplish its duties and obligations. It also has all the powers necessary to carry
4 out its rights and obligations, including the right, duty, and power to contract for legal
5 services to prosecute any action affecting the HOA when it deems such action necessary to
6 enforce its powers, rights, and obligations, including the bringing of this action. Under
7 California Civil Code sections 4775 and 5980, the HOA seeks recovery for damages to the
8 Millennium Tower, including, among other things, damages to the common areas; damages to
9 the separate interests that the HOA is obligated to maintain and repair; and damages to the
10 separate interests within the HOA's common interest, power, and standing.

11 26. Defendant Mission Street Development LLC ("MSD") is a limited liability
12 company formed and existing under the laws of the State of Delaware, and doing business in
13 the City and County of San Francisco, California, including the development, construction,
14 improvement, marketing, and sale of the Millennium Tower and its units.

15 27. Defendant Mission Street Holdings LLC ("MSH") is a limited liability
16 company formed and existing under the laws of the State of Delaware, and doing business in
17 the City and County of San Francisco, California, including the development, construction,
18 improvement, marketing, and sale of the Millennium Tower and its units.

19 28. Defendant Millennium Partners Management LLC ("MPM") is a limited
20 liability company formed and existing under the laws of the State of New York, and doing
21 business in the City and County of San Francisco, California, including the development,
22 construction, improvement, marketing, and sale of the Millennium Tower and its units. MPM
23 was the "Assured" for a 2007 loss occurring at the Millennium Tower. On information and
24 belief, the HOA alleges that MPM employees were also entitled to a discounted price on
25 Millennium Tower units by virtue of MPM's involvement and affiliation with the
26 development.

27 29. Defendant Millennium Partners LLC ("MP LLC") is a limited liability
28 company formed and existing under the laws of the State of New York, and doing business in

1 the City and County of San Francisco, California, including the development, construction,
2 improvement, marketing, and sale of the Millennium Tower and its units. MP LLC served as
3 a guarantor in connection with a loan provided to MSD in 2005, the purpose of which was to
4 finance the construction of the Millennium Tower, for which it received payment from MSD.
5 And pursuant to the Millennium Tower Move In/Out Procedures, MP LLC is required to be
6 listed as an additional insured on moving companies' liability insurance policies.

7 30. Defendant Millennium Partners I, Inc. ("MPI") is a corporation formed and
8 existing under the laws of the State of New York, and doing business in California as New
9 York SF Millennium Partners I, Inc., including the development, construction, improvement,
10 marketing, and sale of the Millennium Tower and its units. MPI has been in the real estate
11 development business since at least 1992.

12 31. Collectively, MSD, MSH, MPM, MP LLC, and MPI constitute the
13 "Millennium Defendants." All of the Millennium Defendants are non-public entities about
14 whom little to no financial information is publicly available. All of the Millennium
15 Defendants were integral to the development of the Millennium Tower and profited from the
16 development, construction, improvement, marketing, or sale of the Millennium Tower and its
17 units.

18 32. Defendant Christopher M. Jeffries is a Founding Partner, Principal, and
19 controlling shareholder of MPI. He is also the President of MSH, MPM, and MP LLC. On
20 information and belief, Christopher Jeffries was at all times in control of the day-to-day
21 management and operation of MSD with Philip Aarons and Philip Lovett, as required by the
22 loan agreement that financed the construction of the Millennium Tower. He has been heavily
23 involved in the development, management, and sale of the Millennium Tower and its units.
24 In particular, he was a key participant in the decision to build the Tower with concrete instead
25 of a steel frame, resulting in a significantly heavier building than original designs called for.
26 On information and belief, he was also aware of the Tower's sinking as early as 2007 and
27 participated in bad-faith efforts to conceal the sinking problem from unsuspecting
28 homebuyers and the HOA until all of the Tower's units were sold and the profits from those

1 sales could be transferred from MSD to avoid liability from the sinking.

2 33. Defendant Philip E. Aarons is a Founding Partner, Principal, and shareholder
3 of MPI. He is also Vice President and Secretary of MSH, Vice President of MPM, and Vice
4 President of MP LLC. On information and belief, Philip Aarons was at all times in control of
5 the day-to-day management and operation of MSD with Christopher Jeffries and Philip
6 Lovett, as required by the loan agreement that financed the construction of the Millennium
7 Tower. He has been heavily involved in the development, management, and sale of the
8 Millennium Tower and its units. On information and belief, he was also aware of the Tower's
9 sinking as early as 2007 and participated in bad-faith efforts to conceal the sinking problem
10 from unsuspecting homebuyers and the HOA until all of the Tower's units were sold and the
11 profits from those sales could be transferred from MSD to avoid liability from the sinking.

12 34. Defendant Philip H. Lovett is a Founding Partner, Principal, and shareholder of
13 MPI. He is also Vice President of MSH, Vice President of MPM, and Vice President and
14 Secretary of MP LLC. On information and belief, Philip Lovett was at all times in control of
15 the day-to-day management and operation of MSD with Christopher Jeffries and Philip
16 Aarons, as required by the loan agreement that financed the construction of the Millennium
17 Tower. He has been heavily involved in the development, management, and or sale of the
18 Millennium Tower and its units. In particular, he directed the Millennium Tower's
19 condominium sales and services strategies and business plan for the project. He also
20 participated in the design and layout of the Millennium Tower units. On information and
21 belief, he was also aware of the Tower's sinking as early as 2007 and participated in bad-faith
22 efforts to conceal the sinking from unsuspecting homebuyers and the HOA until all of the
23 Tower's units were sold and the profits from those sales could be transferred from MSD to
24 avoid liability from the sinking. On one occasion, he spoke directly with a prospective
25 homebuyer who was concerned about the Tower's sinking as early as December 2009, and
26 assuaged the prospective homebuyer's concerns by minimizing the Tower's increasingly
27 serious problems.

28 35. Collectively, Christopher Jeffries, Aarons, and Lovett constitute the

1 “Millennium Founders.” Allegations directed at Millennium Partners, rather than any specific
2 entity, apply to the conduct for which the specific Millennium Partners legal entity obscured
3 its legal identity. In situations where the specific legal entity can be identified, the allegations
4 are directed towards the specific legal entity as identified herein. For example, when
5 Millennium Partners I, Inc. (“MPI”) conducts business as “Millennium Partners, Inc.” or
6 “Millennium Partners,” this complaint refers to the entity as MPI. On information and belief,
7 at least some conduct taken in the name of “Millennium Partners” was undertaken on behalf
8 of MPI. On information and belief, “Millennium Partners” failed to comply with the fictitious
9 business name statutes, California Business and Professions Code section 17900 *et seq.*,
10 thereby precluding parties such as the HOA from understanding the true identity or identities
11 of the legal entities doing business under the name “Millennium Partners.”

12 36. Defendant Sean Jeffries is Vice President of MSH and the authorized agent of
13 MSD and MPM. Sean Jeffries signed the September 1, 2011 First Amendment to the
14 Easement Agreement between the TJPA and the HOA, and was listed as the designated
15 recipient of monitoring data from the TJPA regarding the sinking and tilting of the Tower. In
16 this capacity but without authorization by the HOA, he volunteered and undertook to act on
17 behalf of the HOA, effectively participating in HOA board meetings as if he were a member
18 of the HOA’s board, and thus owed a fiduciary duty to the HOA to keep them informed about
19 any issues with the Millennium Tower. Sean Jeffries is a resident of San Francisco,
20 California.

21 37. Defendant John Luciano is Vice President of MPM and was the Property
22 Manager for Millennium Partners in relation to the Millennium Tower. He was also a
23 member of the HOA’s board from 2009 through 2016. Luciano was involved in the
24 development, management, and sale of the Millennium Tower and its condominium units. As
25 a representative of the entities with sole access to certain information about the Tower,
26 Luciano owed a fiduciary duty to the HOA to keep the HOA informed about any issues with
27 the Millennium Tower. John Luciano is a resident of San Francisco, California.

28 38. Defendant Webcor Construction LP (“Webcor”), is the survivor to a merger

1 with Webcor Construction, Inc., and is a limited partnership formed under the laws of the
2 State of California with its principal place of business in California and doing business as
3 “Webcor Builders.” Webcor Construction, Inc. was a corporation formed under the laws of
4 the State of California, with its principal place of business in California, and also doing
5 business as “Webcor Builders.” Webcor entered into an Agreement for Construction
6 Management Services with MSD to act as the general contractor for the Millennium
7 Defendants in the construction of the Millennium Tower.

8 39. Defendant Handel Architects LLP (“Handel”) is a limited liability partnership
9 doing business in the City and County of San Francisco, California. Handel was the architect
10 of record and designed the Millennium Tower and its components.

11 40. Defendant Treadwell & Rollo, Inc. (“Treadwell & Rollo”) is a dissolved
12 corporation that had its principal place of business in the City and County of San Francisco,
13 California. Treadwell & Rollo was the geotechnical engineer of record for the Millennium
14 Tower. Treadwell & Rollo was subsequently known as T & R Consolidated, Inc. Treadwell
15 & Rollo sold its assets to Langan Engineering and Environmental Services, Inc. before
16 dissolving.

17 41. Defendant Langan Engineering and Environmental Services, Inc. (“Langan”) is a New Jersey corporation engaged in various geotechnical, environmental, and other
18 engineering services, and is the successor in interest to Treadwell & Rollo, subsequently
19 known as T & R Consolidated. Langan’s liability as the successor in interest to Treadwell &
20 Rollo is based on the following factual allegations:
21

- 22 a. All or substantially all of Treadwell & Rollo’s assets were transferred
23 to Langan pursuant to an Asset Purchase Agreement on November 1,
24 2010.
- 25 b. On information and belief, the HOA alleges that this asset transfer was
26 not supported by adequate consideration.
- 27 c. Treadwell & Rollo legally changed its name to Treadwell & Rollo
28 Consolidated, Inc. (“T & R Consolidated”) after the asset purchase. T

1 & R Consolidated subsequently dissolved and no longer exists as an
2 operating entity.

- 3 d. Plans called for Treadwell & Rollo to maintain its name for an interim
4 period, but be branded “A Langan Company.” In 2012, it would
5 become known as “Langan Engineering & Environmental Services.”¹⁵
- 6 e. One or more individuals were officers, directors, or stockholders of
7 both Treadwell & Rollo and Langan. Philip Tringale was President of
8 Treadwell & Rollo, Inc., and currently is Director of Western
9 Operations at Langan Engineering & Environmental Services. He
10 represents that the start date for both positions was March 1992.¹⁶
- 11 f. Langan acquired all assets necessary to carry on Treadwell & Rollo’s
12 business, including its goodwill, books and records, licenses, trade
13 accounts, and employees.
- 14 g. Langan continued to conduct business at Treadwell & Rollo’s prior
15 business address with substantially the same personnel Treadwell &
16 Rollo employed, and the same general business operations that
17 Treadwell & Rollo previously conducted.
- 18 h. Both Langan and Treadwell & Rollo publicly referred to the transaction
19 as a merger between the two companies.
- 20 i. Langan assumed the obligations of Treadwell & Rollo necessary for the
21 continuation of Treadwell & Rollo’s business obligations. Indeed, it
22 continued on with Treadwell & Rollo’s obligations at 301 Mission
23 Street: From approximately 2012 through 2013, “Treadwell & Rollo: A
24 Langan Company” produced memoranda to Millennium Partners
25 evaluating Arup’s settlement monitoring measurements. In 2014,
26

27 ¹⁵ PR Newswire, *Langan Acquires Treadwell & Rollo* (Nov. 1, 2010),
28 <http://www.prnewswire.com/news-releases/langan-acquires-treadwell--rollo-106465148.html>.

¹⁶ Philip Tringale, LinkedIn, <https://www.linkedin.com/in/philip-tringale-85b37711/>.

1 “Langan Treadwell Rollo” continued with the same evaluation
2 memoranda using the same template. And in December 2016,
3 “Langan” continued the work Treadwell & Rollo had begun, presenting
4 the results of building survey measurements in a Building Survey
5 Report.

6 42. Defendant DeSimone Consulting Engineers LLC (“DeSimone”) is a limited
7 liability company organized under the laws of the State of Delaware and doing business in the
8 City and County of San Francisco, California. DeSimone LLC acted as the structural
9 engineer for the Millennium Defendants in connection with the design and construction of the
10 Millennium Tower. DeSimone LLC filed a Cross-Complaint and an Answer admitting to
11 providing structural engineering services at 301 Mission Street in the related matter, *Laura S.*
12 *Lehman, et. al. v. Transbay Joint Powers Authority, et al.* DeSimone is also known as
13 DeSimone Consulting Engineers, PLLC, and is also a professional limited liability company
14 organized under the laws of the State of California and doing business in the City and County
15 of San Francisco, California. DeSimone entered an Agreement for Structural Engineering
16 Services to act as structural engineer for the Millennium Defendants in connection with the
17 design and construction of the Millennium Tower.

18 43. Collectively, Treadwell & Rollo, Langan, and DeSimone are the “Engineering
19 Defendants.”

20 44. Defendant Transbay Joint Powers Authority (“TJPA”) is a government joint
21 powers entity created under California Government Code section 6500 *et seq.* with its
22 principal office located at 201 Mission Street, Suite 2100, San Francisco, California 94105.
23 The TJPA was created by a Joint Power Agreement dated April 2, 2001 between the City and
24 County of San Francisco, the Alameda-Contra Costa Transit District, and the Peninsula
25 Corridor Joint Power Board. The TJPA is the entity charged with developing the Transbay
26 Terminal, which includes construction of the five-story Transit Center and underground train
27 facility directly adjacent to the Property.

28 45. Defendant Arup North America Ltd. (“Arup”) is a corporation formed under

1 the laws of the United Kingdom, and on information and belief has its principal place of
2 business in California. Arup is a geotechnical engineering firm who was retained by the
3 TJPA's architect, Pelli Clarke Pelli Architects, to provide geotechnical studies of the soil
4 underlying, and foundation of, the Transbay Terminal Project, and to design a below-ground
5 buttress pile wall on and adjacent to the Property.

6 46. Defendant Transbay Tower LLC is a limited liability company organized
7 under the laws of the State of Delaware and conducting business within the State of
8 California. Transbay Tower LLC is the owner and one of the developers of the Salesforce
9 Tower, located at 415 Mission Street in San Francisco, California.

10 47. Defendant Boston Properties, Inc. is a corporation organized under the laws of
11 the State of Delaware and conducting business within the State of California. On information
12 and belief, Boston Properties, Inc. is a participant in, and exercises decision-making authority
13 over, the development of the Salesforce Tower.

14 48. Defendant Clark-Hathaway Dinwiddie, A Joint Venture, is a joint venture
15 formed by Clark Construction Group, LLC and Hathaway Dinwiddie Construction Company
16 in connection with the construction of the Salesforce Tower. On information and belief,
17 Clark-Hathaway was Transbay Tower LLC's general contractor responsible for managing the
18 construction of the Salesforce Tower. Collectively, Transbay Tower LLC, Boston Properties,
19 Inc., and Clark-Hathaway Dinwiddie constitute the "Salesforce Tower Defendants."

20 49. The HOA is ignorant of the true names and capacities of defendants sued as
21 Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
22 The HOA will amend this Complaint to allege the true names and capacities of these
23 defendants when ascertained. Each of the fictitiously named defendants is, or will be,
24 responsible for the occurrences alleged in this Complaint and for the HOA's injuries, both
25 existing and prospective. Each Doe defendant legally and proximately caused damage to the
26 HOA. Each and every Doe defendant had a duty to the HOA to use reasonable care in
27 performing the tasks related to the planning, development, creation, improvement, design,
28 construction, supervision, observation, inspection, management, and/or repair of the

1 Millennium Tower.

2 **IV. SECONDARY LIABILITY**

3 **A. Single Enterprise Liability**

4 **1. Millennium Defendants**

5 50. The Millennium Defendants are all collectively secondarily liable as a single
 6 enterprise for the direct acts and omissions of each of their component entities—MSD, MSH,
 7 MPM, MP LLC, and MPI—alleged herein. Although there are technically five legal entities,
 8 “there is but one enterprise,” and this enterprise “has been so handled that it should respond, as a
 9 whole, for the debts of certain component elements of it.” *See Las Palmas Associates v. Las*
 10 *Palmas Center Associates*, 235 Cal. App. 3d 1220, 1248 (1991). Accordingly, the Court should
 11 construct, for purposes of imposing liability, an entity comprising the assets and liabilities of all
 12 the Millennium Defendants, and charge it with the liabilities of all the Millennium Defendants.
 13 *See id.* The Millennium Defendants’ secondary liability as a single enterprise is based on at least
 14 the following factual allegations:

- 15 a. The use of each of the component entities of the Millennium Defendants as
- 16 mere shells, instrumentalities, and conduits for a single purpose—the
- 17 development of the Millennium Tower;
- 18 b. The use by each of the component entities of the Millennium Defendants of the
- 19 same offices and business location;
- 20 c. The employment by each of the Millennium Defendants of the same
- 21 employees and attorney;
- 22 d. The failure to adequately capitalize MSD, MSH, and MPM;
- 23 e. The disregard of legal formalities and the failure to maintain arm’s length
- 24 relationships among the Millennium Defendants;
- 25 f. The concealment of the identity of the specific responsible Millennium
- 26 Defendants;
- 27 g. The use of component entities of the Millennium Defendants to shield against
- 28 liability of other component Millennium Defendant entities;

- 1 h. The fact that adherence to the fiction of a separate corporate existence of each
2 of the five Millennium Defendants would promote injustice under these
3 circumstances; and
- 4 i. The fact that throughout the entire period of development, from the concept of
5 the Millennium Tower development in the late 1990s to the sales and
6 management extending from 2009 to 2016, the Millennium Defendants acted
7 as a single enterprise and capitalized on the name recognition of that single
8 enterprise to reap hundreds of millions of dollars in revenues. In dozens of
9 official documents, the Millennium Defendants represented that the owner and
10 developer of the Millennium Tower was “Millennium Partners” and acted as a
11 single entity. The Millennium Defendants made this representation to the San
12 Francisco city officials responsible for permitting the Millennium Tower and
13 prospective and actual homeowners of the units in the Millennium Tower.
- 14 j. Despite having promoted and marketed the Tower as the work of the
15 “Millennium Partners” before the building’s defects were discovered, when
16 employees and agents working for both MSD and other Millennium
17 Defendants first learned of the Tower’s excessive sinking as early as 2007, and
18 then again when the problems grew increasing drastic in 2009, these
19 employees and agents of MSD and the Millennium Defendants took steps in
20 bad faith to erase the involvement of the other Millennium Defendants, the
21 Millennium Founders, and the “Millennium Partners” in the Tower’s
22 development after the fact, both to isolate the liability for a potential lawsuit to
23 MSD and to avoid paying the full cost of an extraordinarily expensive repair of
24 the Tower’s foundation. The Millennium Defendants, operating at the
25 direction of the Millennium Founders, also consciously decided to avoid
26 making adequate disclosures to the HOA, residents, or prospective residents,
27 about the sinking and tilting to minimize their liability.

28 **B. Alter Ego Liability**

1 **1. Millennium Founders**

2 51. Christopher Jeffries is secondarily liable for the conduct of MSD, MSH, MPM,
3 MP LLC, and MPI alleged herein because each of these five entities were and are the alter egos
4 that Chris Jeffries used for the purpose of the Millennium Tower project. Each of MSD, MSH,
5 MPM, MP LLC, and MPI were at all relevant times the alter egos of Chris Jeffries. A direct or
6 indirect unity of interest and ownership existed between each of MSD, MSH, MPM, MP LLC,
7 and MPI, on the one hand, and Chris Jeffries on the other hand, and adherence to the fiction of
8 separate corporate existence would promote injustice under these circumstances. Because the
9 Millennium Defendants are all non-public entities, the full extent of Chris Jeffries' influence and
10 control over all of the Millennium Entities is within the exclusive knowledge of Chris Jeffries.
11 Chris Jeffries' alter ego liability is based on at least the following factual allegations:

- 12 a. Christopher Jeffries directs and manages all Millennium Partners' projects,
13 including all of the conduct with respect to the Millennium Tower undertaken
14 by MSD, MSH, MPM, MP LLC, and MPI. This has been the case since he
15 founded Millennium Partners and "set his sights on key gateway cities across
16 the United States" for his new form of mixed-use developments.¹⁷ His co-
17 founder Aarons acknowledged as much, stating that Christopher Jeffries makes
18 the "final decisions" at Millennium.¹⁸ This is also specifically true as to the
19 Millennium Tower: Christopher Jeffries took ownership of and defended the
20 Tower on behalf of MPI at a September 20, 2016 press conference declaring:
21 "We did this building the right way."¹⁹
- 22 b. Chris Jeffries' efforts to develop, construct, improve, market, and sell the
23 Millennium Tower by using, dominating, and controlling MSD, MSH, MPM,

24 ¹⁷ Millennium Partners, <http://millenniumptrs.com> (last visited Mar. 28, 2017).

25 ¹⁸ Aug. 12, 2010 Philip Aarons Dep. 42:18-21, cited as Ex. 5 to Plaintiff's Notice of Filing
26 Exhibits in Support of Plaintiffs' Responses to Defendants' Motions for Summary Judgment and
Motions for Judgment on the Pleadings, *Altenel, Inc. v. Millennium Partners, LLC, et al.*, No.
1:11-cv-22806-KMW, ECF No. 338-5.

27 ¹⁹ Associated Press, *San Francisco Skyscraper Is Leaning - And Sinking*, Popular Mechs. (Oct.
28 24, 2016), <http://www.popularmechanics.com/technology/infrastructure/a23521/san-francisco-skyscraper-is-leaningand-sinking/>.

1 MP LLC, and MPI allowed him, to effectuate the dream of developing
 2 “housing with a lifestyle” across the country.²⁰ In so doing, Chris Jeffries
 3 dominated and controlled the affairs of MSD, MSH, MPM, MP LLC, and
 4 MPI, using them as mere conduits for his worldwide real estate development
 5 pursuits.

6 c. Chris Jeffries profited from sales of condominium units in the Millennium
 7 Tower and benefitted from the success of the Millennium Tower in his other
 8 business ventures.

9 d. Chris Jeffries controlled and dominated MSD, MSH, MPM, MP LLC, and
 10 MPI when making crucial decisions about the development, construction,
 11 and management of the Millennium Tower. For example, the residential
 12 layouts were the product of his vision. A memorandum enclosing a revised
 13 plan of the amenity level and mid-rise building layouts incorporated Chris
 14 Jeffries’ comments.²¹

15 e. Chris Jeffries disregarded the formal distinctions between MSD, MSH,
 16 MPM, MP LLC, and MPI treating them as the same. For example, Chris
 17 Jeffries sent memoranda reviewing and suggesting changes to 301 Mission
 18 plans on “Millennium Partners” letterhead.²² In addition, “Millennium
 19 Partners” was the recipient of invoices for construction and other
 20 professional services completed at the Millennium Tower by various
 21 firms.²³

22 f. The assets of MSD, MSH, MPM, MP LLC, and MPI were commingled in
 23

24 ²⁰ Jennifer Frey, *Striking It Ritz; For the, er, Richly Deserving, a Not-So-Humble Abode*, Wash.
 25 Post, Aug. 24, 1999.

26 ²¹ Memorandum from Glenn Rescalvo to Phil Lovett, Richard Baumert, Sean Jeffries and Steve
 27 Patterson re Amenity Level/Mid-rise layouts (Sept. 21, 2005).

28 ²² Memorandum from Chris Jeffries to Mark Farrar, Sean Jeffries, Pamela Malkani & David
 Rothstein (May 20, 2002).

²³ J&C Fuentes Invoice (May 21, 2010); Architectural Energy Corp. Invoice (April 30, 2010);
 McMillan Companies Invoice (May 6, 2010).

1 the development of the Millennium Tower. On information and belief,
 2 Chris Jeffries was involved in this commingling of assets and diverted the
 3 income and assets of the various entities without regard to the corporate
 4 form.

- 5 g. Chris Jeffries shares his attorney with the Millennium Defendants.
- 6 h. Chris Jeffries has benefited from the development, construction, and sale of the
 7 Millennium Tower such that it would be unjust if he were to escape liability
 8 for obligations associated with these benefits by adhering to the fiction that
 9 MSD, MSH, MPM, MP LLC, and MPI each have a separate corporate
 10 existence. Modelling subsequent developments on the San Francisco
 11 Millennium Tower, Chris Jeffries has benefited from his reputation as a
 12 national leader in luxury living. Without the “impressive portfolio across the
 13 nation,” including the Millennium Tower San Francisco, Chris Jeffries could
 14 not have drawn on this powerful branding to advertise his latest project, the
 15 Millennium Tower in Boston.²⁴ Accolades include the San Francisco Chamber
 16 of Commerce’s “Excellence in Business—Building San Francisco” Award,
 17 which was accepted by Managing Director Baumert.²⁵ In establishing a brand
 18 and a logo based on “Millennium Partners,” which is identified with him
 19 personally, Chris Jeffries personally benefitted from the Millennium Tower
 20 and related projects. But in order to draw upon the power of this national
 21 brand, Chris Jeffries must be required to take responsibility for the flaws in his
 22 various developments.

- 23 i. Despite having promoted and marketed the Tower as the work of the
 24 “Millennium Partners” before the building’s defects were discovered, when
 25

26 ²⁴ Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017),
 27 <http://upscalelivingmag.com/millennium-boston-tower/>.

28 ²⁵ Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010)*,
<http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards>.

1 employees and agents working for both MSD and other Millennium
2 Defendants first learned of the Tower's excessive sinking as early as 2007, and
3 then again when the problems grew increasing drastic after 2009, these
4 employees and agents of MSD and the Millennium Defendants took steps in
5 bad faith to erase the involvement of the other Millennium Defendants and the
6 "Millennium Partners" in the Tower's development after the fact, both to
7 isolate the liability for a potential lawsuit to MSD and to avoid paying the full
8 cost of an extraordinarily expensive repair of the Tower's foundation. On
9 information and belief, Chris Jeffries was involved in these bad faith efforts to
10 contain any liability associated with the Towers' defects to MSD, despite
11 knowing that MSD would not have sufficient assets to remedy the Tower's
12 defective foundation. The Millennium Defendants, operating at the direction
13 of the Millennium Founders, also consciously decided to avoid making
14 adequate disclosures to the HOA, residents, or prospective residents, about the
15 sinking and tilting to minimize their liability.

16 52. Philip Aarons is secondarily liable for the conduct of MSD, MSH, MPM, MP
17 LLC, and MPI alleged herein because each of these five entities were and are the alter egos that
18 Aarons used for the purpose of the Millennium Tower project. Each of MSD, MSH, MPM, MP
19 LLC, and MPI were at all relevant times the alter egos of Aarons. A direct or indirect unity of
20 interest and ownership existed between each of MSD, MSH, MPM, MP LLC, and MPI, on the
21 one hand, and Aarons on the other hand, and adherence to the fiction of separate corporate
22 existence would promote injustice under these circumstances. Because the Millennium
23 Defendants are all non-public entities, the full extent of Aarons' influence and control over all of
24 the Millennium Entities is within the exclusive knowledge of Aarons. Aarons' alter ego liability
25 is based on at least the following factual allegations:

- 26 a. Aarons speaks and acts as a representative for and owner of Millennium
27 Partners, including all of the conduct with respect to the Millennium Tower
28 allegedly undertaken by MSD, MSH, MPM, MP LLC, and MPI. He too

1 represented MPI at the September 2016 press conference. Aarons was
 2 involved in high-level strategic decisions about the Millennium Tower project
 3 in its early development phases; for example, he joined Sean Jeffries to meet
 4 with potential designers and architects for the project in 2006. In 2003, when
 5 speaking to the planning commissioners for the City and County of San
 6 Francisco, Aarons stated in relation to the Millennium Tower “This project we
 7 are especially proud of.” He is identified as an “Important MP [Person]” in the
 8 Millennium Tower Sales Manual.²⁶

- 9 b. Aarons’ efforts to develop, construct, improve, market, and sell the
 10 Millennium Tower by using, dominating, and controlling MSD, MSH, MPM,
 11 MP LLC, and MPI allowed him, to effectuate the dream of developing
 12 “housing with a lifestyle” across the country.²⁷ In so doing, Aarons dominated
 13 and controlled the affairs of MSD, MSH, MPM, MP LLC, and MPI, using
 14 them as mere conduits for his worldwide real estate development pursuits.
- 15 c. Aarons profited from sales of condominium units in the Millennium Tower and
 16 benefitted from the success of the Millennium Tower in his other business
 17 ventures.
- 18 d. Aarons controlled and dominated MSD, MSH, MPM, MP LLC, and MPI
 19 when making crucial decisions about the development, construction, and
 20 management of the Millennium Tower.
- 21 e. Aarons disregarded the formal distinctions between MSD, MSH, MPM,
 22 MP LLC, and MPI treating them as the same. For example, he received
 23 transmittals from Handel of Millennium Tower drawings and plans to
 24 “Millennium Partners New York.”²⁸ In addition, “Millennium Partners”
 25 was the recipient of invoices for construction and other professional

26 ²⁶ Millennium Tower San Francisco Sales Manual, Book 1, Oct. 2007.

27 ²⁷ Jennifer Frey, *Striking It Ritz; For the, er, Richly Deserving, a Not-So-Humble Abode*, Wash. Post, Aug. 24, 1999.

28 ²⁸ See, e.g., Handel Architects Transmittal to Rod Johnson & Phil Lovett (June 19, 2006).

1 services completed at the Millennium Tower by various firms.²⁹ Steven
 2 Hood (an employee of Millennium Partners) and Sean Jeffries sent
 3 correspondence related to the Millennium Tower on behalf of the
 4 Millennium Defendants and on “Millennium Partners” letterhead.³⁰

- 5 f. The assets of MSD, MSH, MPM, MP LLC, and MPI were commingled in
 6 the development of the Millennium Tower. Aarons was involved in this
 7 commingling of assets and diverted the income and assets of the various
 8 entities without regard to the corporate form.
- 9 g. Aarons shares his attorney with the Millennium Defendants.
- 10 h. Aarons has benefited from the development, construction, and sale of the
 11 Millennium Tower such that it would be unjust if he were to escape liability
 12 for obligations associated with these benefits by adhering to the fiction that
 13 MSD, MSH, MPM, MP LLC, and MPI each have a separate corporate
 14 existence. Modelling subsequent developments on the San Francisco
 15 Millennium Tower, Aarons has benefited from Millennium Partners’
 16 reputation as a national leader in luxury living. Without the “impressive
 17 portfolio across the nation,” including the Millennium Tower San Francisco,
 18 Aarons could not have drawn on this powerful branding to advertise his latest
 19 project, the Millennium Tower in Boston.³¹ Accolades include the San
 20 Francisco Chamber of Commerce’s “Excellence in Business—Building San
 21 Francisco” Award, which was accepted by Managing Director Baumert.³² In
 22 establishing a brand and a logo based on “Millennium Partners,” which is

23
 24 ²⁹ J&C Fuentes Invoice (May 21, 2010); Architectural Energy Corp. Invoice (April 30, 2010);
 McMillan Companies Invoice (May 6, 2010).

25 ³⁰ Letter from Steven Hood to Kenneth Klein at Simpson Gumpertz & Heger (June 8, 2009).
 Letter from Sean Jeffries to Jeff Peters (Feb. 28, 2014).

26 ³¹ Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017),
 27 <http://upscalelivingmag.com/millennium-boston-tower/>.

28 ³² Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010)*,
<http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards>.

1 identified with him personally, Aarons personally benefitted from the
2 Millennium Tower and related projects. But in order to draw upon the power
3 of this national brand, Aarons must be required to take responsibility for the
4 flaws in his various developments.

5 53. Despite having promoted and marketed the Tower as the work of the “Millennium
6 Partners” before the building’s defects were discovered, when employees and agents working for
7 both MSD and other Millennium Defendants first learned of the Tower’s excessive sinking as
8 early as 2007, and then again when the problems grew increasing drastic after 2009, these
9 employees and agents of MSD and the Millennium Defendants took steps in bad faith to erase the
10 involvement of the other Millennium Defendants and the “Millennium Partners” in the Tower’s
11 development after the fact, both to isolate the liability for a potential lawsuit to MSD and to avoid
12 paying the full cost of an extraordinarily expensive repair of the Tower’s foundation. On
13 information and belief, Philip Aarons was involved in these bad faith efforts to contain any
14 liability associated with the Towers’ defects to MSD, despite knowing that MSD would not have
15 sufficient assets to remedy the Tower’s defective foundation. The Millennium Defendants,
16 operating at the direction of the Millennium Founders, also consciously decided to avoid making
17 adequate disclosures to the HOA, residents, or prospective residents, about the sinking and tilting
18 to minimize their liability. Philip Lovett is secondarily liable for the conduct of MSD, MSH,
19 MPM, MP LLC, and MPI alleged herein because each of these five entities were and are the alter
20 egos that Lovett used for the purpose of the Millennium Tower project. Each of MSD, MSH,
21 MPM, MP LLC, and MPI were at all relevant times the alter egos of Lovett. A direct or indirect
22 unity of interest and ownership existed between each of MSD, MSH, MPM, MP LLC, and MPI,
23 on the one hand, and Lovett on the other hand, and adherence to the fiction of separate corporate
24 existence would promote injustice under these circumstances. Because the Millennium
25 Defendants are all non-public entities, the full extent of Lovett’s influence and control over all of
26 the Millennium Entities is within the exclusive knowledge of Lovett. Lovett’s alter ego liability
27 is based on at least the following factual allegations:

28 a. Lovett is responsible for the day-to-day operations and management of all

1 Millennium Partners projects, including all of the conduct with respect to the
 2 Millennium Tower allegedly undertaken by MSD, MSH, MPM, MP LLC, and
 3 MPI.³³ Accordingly, he is listed as an emergency contact in the Millennium
 4 Tower Sales Manual³⁴ and was involved in communications regarding the
 5 budgets for each of the Millennium Tower constituent residences.³⁵ He also
 6 closely supervised the minutiae of building design decisions from the unit
 7 finishes to the waterproofing of the garage. Lovett exercised control over
 8 several of the Millennium Partners entities as Vice President of MSH (which is
 9 the sole member of MSD) and signed legal documents on behalf of MSD.

- 10 b. Lovett's efforts to develop, construct, improve, market, and sell the
 11 Millennium Tower by using, dominating, and controlling MSD, MSH, MPM,
 12 MP LLC, and MPI allowed him, to effectuate the dream of developing
 13 "housing with a lifestyle" across the country.³⁶ In so doing, Lovett dominated
 14 and controlled the affairs of MSD, MSH, MPM, MP LLC, and MPI, using
 15 them as mere conduits for his worldwide real estate development pursuits.
- 16 c. Lovett profited from sales of condominium units in the Millennium Tower and
 17 benefitted from the success of the Millennium Tower in his other business
 18 ventures.
- 19 d. Lovett controlled and dominated MSD, MSH, MPM, MP LLC, and MPI
 20 when making crucial decisions about the development, construction, and
 21 management of the Millennium Tower.
- 22 e. Lovett disregarded the formal distinctions between MSD, MSH, MPM, MP
 23 LLC, and MPI treating them as the same. For example, "Millennium
 24

25 ³³ Millennium Partners, <http://millenniumptrs.com> (last visited March 28, 2017).

26 ³⁴ Millennium Tower San Francisco Sales Manual, Book 1, Oct. 2007.

27 ³⁵ Email from David Goblen to Stephanie Kay-Foss regarding Preliminary Budget Comments
 (Feb. 28, 2013).

28 ³⁶ Jennifer Frey, *Striking It Ritz; For the, er, Richly Deserving, a Not-So-Humble Abode*, Wash.
 Post, Aug. 24, 1999.

Partners” was the recipient of invoices for construction and other professional services completed at the Millennium Tower by various firms.³⁷ Steven Hood (an employee of Millennium Partners) and Sean Jeffries sent correspondence related to the Millennium Tower on behalf of the Millennium Defendants and on “Millennium Partners” letterhead.³⁸³⁹

- f. The assets of MSD, MSH, MPM, MP LLC, and MPI were commingled in the development of the Millennium Tower. Lovett was involved in this commingling of assets and diverted the income and assets of the various entities without regard to the corporate form.
- g. Lovett shares his attorney with the Millennium Defendants.
- h. Lovett has benefited from the development, construction, and sale of the Millennium Tower such that it would be unjust if he were to escape liability for obligations associated with these benefits by adhering to the fiction that MSD, MSH, MPM, MP LLC, and MPI each have a separate corporate existence. Modelling subsequent developments on the San Francisco Millennium Tower, Lovett has benefited from Millennium Partners’ reputation as a national leader in luxury living. Without the “impressive portfolio across the nation,” including the Millennium Tower San Francisco, Lovett could not have drawn on this powerful branding to advertise their latest project, the Millennium Tower in Boston.⁴⁰ Accolades include the San Francisco Chamber of Commerce’s “Excellence in Business—Building San Francisco” Award, which was accepted by Managing Director Baumert.⁴¹ In establishing a brand

³⁷ J&C Fuentes Invoice (May 21, 2010); Architectural Energy Corp. Invoice (April 30, 2010); McMillan Companies Invoice (May 6, 2010).

³⁸ Letter from Steven Hood to Kenneth Klein at Simpson Gumpertz & Heger (June 8, 2009).

³⁹ Letter from Sean Jeffries to Jeff Peters (Feb. 28, 2014).

⁴⁰ Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017), <http://upscalelivingmag.com/millennium-boston-tower/>.

⁴¹ Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010)*, <http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards>.

1 and a logo based on “Millennium Partners,” which is identified with him
 2 personally, Lovett personally benefitted from the Millennium Tower and
 3 related projects. But in order to draw upon the power of this national brand,
 4 Lovett must be required to take responsibility for the flaws in his various
 5 developments.

- 6 i. Despite having promoted and marketed the Tower as the work of the
 7 “Millennium Partners” before the building’s defects were discovered, when
 8 employees and agents working for both MSD and other Millennium
 9 Defendants first learned of the Tower’s excessive sinking as early as 2007, and
 10 then again when the problems grew increasing drastic after 2009, these
 11 employees and agents of MSD and the Millennium Defendants took steps in
 12 bad faith to erase the involvement of the other Millennium Defendants and the
 13 “Millennium Partners” in the Tower’s development after the fact, both to
 14 isolate the liability for a potential lawsuit to MSD and to avoid paying the full
 15 cost of an extraordinarily expensive repair of the Tower’s foundation. On
 16 information and belief, Philip Lovett was involved in these bad faith efforts to
 17 contain any liability associated with the Towers’ defects to MSD, despite
 18 knowing that MSD would not have sufficient assets to remedy the Tower’s
 19 defective foundation. The Millennium Defendants, at the direction of the
 20 Millennium Founders, also consciously decided to avoid making adequate
 21 disclosures to the HOA, residents, or prospective residents, about the sinking
 22 and tilting to minimize their liability.

23 **2. Millennium Defendants**

24 54. As an alternative to the theory of single enterprise liability alleged against the
 25 Millennium Defendants alleged in section IV.A.1 *supra*, the HOA alleges that the Millennium
 26 Defendants are secondarily liable based on the following alter ego theory of secondary
 27 liability.

28 55. MPI is liable for the conduct of MSD, MSH, MPM, and MP LLC alleged

1 herein because each of these four entities were and are the alter egos that MPI used for the
2 purpose of the Millennium Tower project. Each of MSD, MSH, MPM, and MP LLC were at
3 all relevant times the alter egos of MPI, because a unity of interest and ownership existed
4 between each of MSD, MSH, MPM, MP LLC, on the one hand, and MPI on the other hand,
5 and adherence to the fiction of separate corporate existence would promote injustice under
6 these circumstances. MPI's alter ego liability is based on at least the following factual
7 allegations:

- 8 a. MSD, MSH, MPM, and MP LLC existed as mere conduits or shell
9 corporations for the interests and manipulations of MPI.
- 10 b. MPI dominated and controlled the affairs of MSD, MSH, MPM and MP LLC,
11 using them as mere conduits for its worldwide real estate development
12 pursuits.
- 13 c. MPI profited from sales of condominium units in the Millennium Tower and
14 benefitted from the success of the Millennium Tower in its other business
15 ventures.
- 16 d. MPI controlled and dominated MSD, MSH, MPM, and MP LLC and made
17 crucial decisions about the development, construction, and management of
18 the Millennium Tower.
- 19 e. MPI disregarded the formal distinctions between MSD, MSH, MPM, and
20 MP LLC, treating them as the same.
- 21 f. MSD, MSH, MPM, MP LLC, and MPI all share a business address at 1995
22 Broadway, New York, New York. MSD, MSH, MPM, MP LLC, and MPI
23 also share a common website and use a common logo and brand.
- 24 g. The assets of MSD, MSH, MPM, MP LLC, and MPI were commingled in
25 the development of the Millennium Tower. MPI was involved in this
26 commingling of assets and diverted the income and assets of the various
27 entities without regard to the corporate form.
- 28 h. MSD, MSH, MPM, MP LLC, and MPI share employees and executives.

For instance, Richard Baumert, identified as a Managing Partner of Millennium Boston on the Millennium Partners website,⁴² also signed the First Addendum to the Residential Purchase Agreement as Vice-President of Mission Street Holdings, LLC.⁴³ Other correspondence identifies him as an employee of Millennium Partners LLC.⁴⁴ The overlapping structure of employment and control confused business associates as well: Steven Hood is sometimes addressed as affiliated with “Millennium Partners” and other times with “Mission Street Development.”⁴⁵ MPI’s officers and shareholders themselves work for and have various positions at MSD, MSH, MPM, and MP LLC.

- i. MSD, MSH, MPM, MP LLC, and MPI also share attorneys. In this action and other litigation relating to the sinking and tilting of the Millennium Tower, Peter Meier and Paul Hastings LLP represent MPI, MSD, MSH, MP LLC, MPM, the Millennium Founders, Sean Jeffries, and John Luciano.
- j. MSD, MSH, MPM, and MP LLC were and are undercapitalized and potentially incapable of satisfying a judgment should the HOA prevail in this action. In particular, on information and belief, none of MSD, MSH, MPM, or MP LLC has sufficient assets or is insured sufficiently to cover the HOA’s alleged damages.
- k. MPI has benefited from the development, construction, and sale of the Millennium Tower; it would be unjust if it were to escape liability for obligations associated with these benefits by adhering to the fiction that

⁴² Millennium Partners, <http://millenniumptrs.com> (last visited March 28, 2017).

⁴³ First Addendum to the Residential Purchase Agreement (March 20, 2012) (for Buyers Richard and Jo-Tung Tu Chang).

⁴⁴ Letter from Shirley Cui to Richard Baumert (Oct. 27, 2009).

⁴⁵ Letter from Brian Dykes (TJPA) to Steven Hood (Mission Street Development) (Jan. 8, 2013); Letter from Ramin Golesorkhi and Joseph E. Romano (Langan Treadwell Rollo) to Steven Hood (Millennium Partners) (Sept. 6, 2016).

MSD, MSH, MPM, and MP LLC each have a separate corporate existence. Modelling subsequent developments on the San Francisco Millennium Tower, MPI has benefited from its reputation as national leaders in luxury living. Without its “impressive portfolio across the nation,” including the Millennium Tower San Francisco, MPI could not have drawn on this powerful branding to advertise its latest project, the Millennium Tower in Boston.⁴⁶ Accolades include the San Francisco Chamber of Commerce’s “Excellence in Business—Building San Francisco” Award, which was accepted by Managing Director Baumert.⁴⁷ In establishing a brand and a logo based on “Millennium Partners,” MPI benefitted from the Millennium Tower and related projects.

56. Alternatively, MSH is liable for the conduct of MSD alleged herein because MSD was and is the alter ego that MSH used for the purpose of the Millennium Tower project. MSD was at all relevant times the alter ego of MSH. A unity of interest and ownership existed between each MSD and MSH adherence to the fiction of separate corporate existence would promote injustice under these circumstances. MSH’s alter ego liability is based on at least the following factual allegations: MSH dominated and controlled MSD; MSH directly owns at least some of MSD’s stock; MSD was a mere shell and conduit for MSH’s affairs, MSD was inadequately capitalized; MSD failed to abide by the formalities of the corporate existence; recognizing the separate existence of MSD would promote injustice under the circumstances.

57. Alternatively, MP LLC is liable for the conduct of MSD, MSH and MPM alleged herein because each of these three entities were and are the alter egos that MP LLC used for the purpose of the Millennium Tower project. Each of MSD, MSH, and MPM were

⁴⁶ Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017), <http://upscalelivingmag.com/millennium-boston-tower/>.

⁴⁷ Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010)*, <http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards>.

at all relevant times the alter egos of MP LLC, because a unity of interest and ownership existed between each of MSD, MSH, MPM, on the one hand, and MP LLC, on the other hand, and adherence to the fiction of separate corporate existence would promote injustice under these circumstances. MP LLC's alter ego liability is based on at least the following factual allegations: MP LLC dominated and controlled MSD, MSH and MPM; MP LLC indirectly owns at least some of MSD, MSH and MPM's stock; MSD, MSH and MPM were mere shells and conduits for MP LLC's affairs; MSD, MSH and MPM were inadequately capitalized; MSD, MSH and MPM failed to abide by the formalities of the corporate existence; and recognizing the separate existence of MSD, MSH and MPM would promote injustice under the circumstances.

58. Alternatively, MPM is liable for the conduct of MSD and MSH alleged herein because each of these entities were and are the alter egos that MPM used for the purpose of the Millennium Tower project. Both MSD and MSH, were at all relevant times the alter egos of MPM, because a unity of interest and ownership existed between each of MSD and MSH, on the one hand, and MPM, on the other hand, and adherence to the fiction of separate corporate existence would promote injustice under these circumstances. MPM's alter ego liability of the is based on at least the following factual allegations: MPM dominated and controlled MSD and MSH; MPM indirectly owns at least some of MSD and MSH's stock; MSD, and MSH were mere shells and conduits for MPM's affairs; MSD and MSH were inadequately capitalized; MSD and MSH failed to abide by the formalities of the corporate existence; and recognizing the separate existence of MSD and MSH would promote injustice under the circumstances.

C. Principal Agent Liability

1. Millennium Defendants

59. As an alternative to the theories of single enterprise and alter ego liability alleged in sections IV.A.1 and IV.B.2 *supra*, the HOA alleges that the Millennium Defendants are secondarily liable based on the following principal-agent theory of secondary liability.

60. MPI was the principal and MSD was the agent in a principal-agent relationship

1 with respect to the development of the Millennium Tower. MPI represented that MSD would
2 act for MPI in connection with MSD's activities developing the Millennium Tower by
3 allowing MSD to take actions on behalf of MP or Millennium Partners, both of which were
4 used to refer to MPI. MPI so controlled MSD as to cause MSD to become merely the agent
5 of MPI. MPI had the right to control and supervise the activities of MSD with respect to the
6 development of the Millennium Tower, including control over the day-to-day operations of
7 MSD with respect to the development of the Millennium Tower. MSD accepted that it would
8 be the agent of MPI and understood that it would be controlled by MPI for the purpose of the
9 Millennium Tower's development. The scope of MPI's atypical control over MSD is
10 demonstrated by the factual allegations in paragraph 55, *supra*.

11 61. MPI was the principal and MSH was the agent in a principal-agent relationship
12 with respect to the development of the Millennium Tower. MPI represented that MSH would
13 act for MPI in connection with MSH's activities developing the Millennium Tower by
14 allowing MSH to take actions on behalf of MP of Millennium Partners, both of which refer to
15 MPI. MPI so controlled MSH as to cause MSH to become merely the agent of MPI. MPI
16 had the right to control and supervise the activities of MSH with respect to the development
17 of the Millennium Tower, including control over the day-to-day operations of MSH with
18 respect to the development of the Millennium Tower. MSH accepted that it would be the
19 agent of MPI and understood that it would be controlled by MPI for the purpose of the
20 Millennium Tower's development. The scope of MPI's atypical control over MSH is
21 demonstrated by the factual allegations in paragraph 55, *supra*.

22 62. MPI was the principal and MP LLC was the agent in a principal-agent
23 relationship with respect to the development of the Millennium Tower. MPI represented that
24 MP LLC would act for MPI in connection with MP LLC's activities developing the
25 Millennium Tower by allowing MP LLC to take actions on behalf of MP of Millennium
26 Partners, both of which refer to MPI. MPI so controlled MP LLC as to cause MP LLC to
27 become merely the agent of MPI. MPI had the right to control and supervise the activities of
28 MP LLC with respect to the development of the Millennium Tower, including control over

1 the day-to-day operations of MP LLC with respect to the development of the Millennium
2 Tower. MP LLC accepted that it would be the agent of MPI and understood that it would be
3 controlled by MPI for the purpose of the Millennium Tower's development. The scope of
4 MPI's atypical control over MP LLC is demonstrated by the factual allegations in paragraph
5 55, *supra*.

6 63. MPI was the principal and MPM was the agent in a principal-agent
7 relationship with respect to the development of the Millennium Tower. MPI represented that
8 MPM would act for MPI in connection with MPM's activities developing the Millennium
9 Tower by allowed MPM to take actions on behalf of MP of Millennium Partners, both of
10 which refer to MPI. MPI so controlled MPM as to cause MPM to become merely the agent of
11 MPI. MPI had the right to control and supervise the activities of MPM with respect to the
12 development of the Millennium Tower, including control over the day-to-day operations of
13 MPM with respect to the development of the Millennium Tower. MPM accepted that it
14 would be the agent of MPI and understood that it would be controlled by MPI for the purpose
15 of the Millennium Tower's development. The scope of MPI's atypical control over MPM is
16 demonstrated by the factual allegations in paragraph 55, *supra*.

17 64. Alternatively, MP LLC was the principal and MSD was the agent in a
18 principal-agent relationship with respect to the development of the Millennium Tower. MP
19 LLC so controlled MSD as to cause MSD to become merely the agent of MP LLC. MP LLC
20 had the right to control and supervise the activities of MSD with respect to the development
21 of the Millennium Tower, including control over the day-to-day operations of MSD with
22 respect to the development of the Millennium Tower. The scope of MP LLC's atypical
23 control over MSD is demonstrated by the factual allegations in paragraph 57, *supra*.

24 65. Alternatively, MP LLC was the principal and MSH was the agent in a
25 principal-agent relationship with respect to the development of the Millennium Tower. MP
26 LLC so controlled MSH as to cause MSH to become merely the agent of MP LLC. MP LLC
27 had the right to control and supervise the activities of MSH with respect to the development
28 of the Millennium Tower, including control over the day-to-day operations of MSH with

1 respect to the development of the Millennium Tower. The scope of MP LLC's atypical
2 control over MSH is demonstrated by the factual allegations in paragraph 57, *supra*.

3 66. Alternatively, MP LLC was the principal and MPM was the agent in a
4 principal-agent relationship with respect to the development of the Millennium Tower. MP
5 LLC so controlled MPM as to cause MPM to become merely the agent of MP LLC. MP LLC
6 had the right to control and supervise the activities of MPM with respect to the development
7 of the Millennium Tower, including control over the day-to-day operations of MPM with
8 respect to the development of the Millennium Tower. The scope of MP LLC's atypical
9 control over MPM is demonstrated by the factual allegations in paragraph 57, *supra*.

10 67. Alternatively, MPM was the principal and MSD was the agent in a principal-
11 agent relationship with respect to the development of the Millennium Tower. MPM so
12 controlled MSD as to cause MSD to become merely the agent of MPM. MPM had the right
13 to control and supervise the activities of MSD with respect to the development of the
14 Millennium Tower, including control over the day-to-day operations of MSD with respect to
15 the development of the Millennium Tower. The scope of MPM's atypical control over MSD
16 is demonstrated by the factual allegations in paragraph 58, *supra*.

17 68. Alternatively, MPM was the principal and MSH was the agent in a principal-
18 agent relationship with respect to the development of the Millennium Tower. MPM so
19 controlled MSH as to cause MSH to become merely the agent of MPM. MPM had the right
20 to control and supervise the activities of MSH with respect to the development of the
21 Millennium Tower, including control over the day-to-day operations of MSH with respect to
22 the development of the Millennium Tower. The scope of MPM's atypical control over MSH
23 is demonstrated by the factual allegations in paragraph 58, *supra*.

24 69. Alternatively, MSH was the principal and MSD was the agent in a principal-
25 agent relationship with respect to the development of the Millennium Tower. MSH so
26 controlled MSD as to cause MSD to become merely the agent of MSH. MSH had the right to
27 control and supervise the activities of MSD with respect to the development of the
28 Millennium Tower, including control over the day-to-day operations of MSD with respect to

1 the development of the Millennium Tower. The scope of MSH's atypical control over MSD
2 is demonstrated by the factual allegations in paragraph 56, *supra*.

3 **V. JURISDICTION AND VENUE**

4 70. Jurisdiction over this action in the Superior Court of the State of California in
5 and for the County of San Francisco is proper pursuant to California Code of Civil Procedure
6 section 410.10 because all Defendants have sufficient minimum contacts with California to
7 support the exercise of jurisdiction.

8 71. Venue is proper in the Superior Court of the State of California pursuant to
9 California Code of Civil Procedure section 392 because the real property that is the subject of
10 the action is located in the City and County of San Francisco. Venue is also proper pursuant
11 to California Code of Civil Procedure section 395.5 because this is the county where some
12 Defendants reside, and pursuant to California Code of Civil Procedure section 395.5 because
13 this county is where the corporate defendant entities' relevant contracts were entered into and
14 performed, and where the relevant obligations and liabilities arose.

15 **VI. EASEMENT AGREEMENTS AND FEIR**

16 72. The TJPA owns real property adjacent to the Property and is in the process of
17 building a new transit terminal that will include an above-ground bus station and a below-
18 ground rail station. It entered into an Easement Agreement with MSD on October 10, 2008,
19 which was authorized by the TJPA Board of Directors on October 17, 2008, and recorded in
20 the official records of the City and County of San Francisco on March 25, 2009, Document
21 no. 2009-I739852-00 (the "Easement Agreement").

22 73. The TJPA then entered into the First Amendment to the Easement Agreement
23 with MSD and the HOA on September 1, 2011, which was recorded in the official records of
24 the City and County of San Francisco on November 3, 2011, Document no. 2011-J296169-00
25 (the "Amended Easement Agreement").

26 74. Under the terms of the Easement Agreement, at Section II.A.1(a), the TJPA
27 covenanted and agreed to design and construct the Support System (lateral and subjacent
28 support for the Property) and the Transit Center to stabilize the soil beneath the Millennium

1 Tower, prevent the material movement and/or settlement of the Millennium Tower, and
2 provide for the structural support, integrity, and safety of the Millennium Tower during and
3 after the TJPA's construction of the Transit Center.

4 75. The TJPA, at Section II.A.1.(b) of the Easement Agreement, agreed that it has
5 the full, complete, and exclusive responsibility for the support, integrity, and safety of the
6 Millennium Tower to the extent the Millennium Tower is affected by the construction of the
7 Transit Center and Support System.

8 76. Under Section II.B.1(h) of the Easement Agreement, the TJPA agreed to
9 repair, at its own cost and expense, or pay the reasonable cost of repairing, any damage to the
10 Millennium Tower substantially caused by the TJPA's construction activities. The TJPA
11 specifically acknowledged that its obligation to repair damage to the Millennium Tower
12 substantially caused by the TJPA's construction activities is not dependent on the existence of
13 fault or negligence on the TJPA's part. In particular, but not exclusively, the TJPA agreed to
14 repair damage to waterproofing or cracks in the foundations or walls of the Millennium
15 Tower resulting from settlement or movement substantially caused by its construction
16 activities.

17 77. Pursuant to the California Environmental Quality Act ("CEQA") and in light
18 of the size and scope of the Transit Center, a Final Environmental Impact Report ("FEIR")
19 was prepared for the Transit Center in 2004.

20 78. As lead agency for the Transit Center under CEQA, TJPA prepared and
21 subsequently certified the FEIR.

22 79. On April 22, 2004, TJPA adopted its Resolution No. 04-004, approving the
23 Transit Center and adopting CEQA findings, a Statement of Overriding Considerations, and a
24 Mitigation Monitoring and Reporting Program for the Transit Center under CEQA. As
25 required by CEQA, TJPA found that the Mitigation Monitoring and Reporting Program set
26 forth enforceable mitigation measures, the implementation of which would reduce or avoid
27 potentially significant environmental consequences of the Transit Center.

28 80. TJPA has subsequently adopted several addenda to the FEIR, determining in

1 each case that modifications to the Transit Center would not require subsequent
2 environmental review and would not require major revisions to the FEIR.

3 81. On information and belief, TJPA incorporated the Mitigation Measures as
4 enforceable components of the Transit Center Project in its Resolution No. 04-004, as
5 required under CEQA.

6 82. The substantive undertakings and obligations of the mitigation measures
7 required for the Transit Center, specifically Mitigation Measure SG 1, required TJPA to
8 “[m]onitor adjacent buildings for movement, and if movement is detected, take immediate
9 action to control the movement.” Mitigation Monitoring and Reporting Program, Rev. 1, 29
10 NOV07 at Mitigation Measure SG 1. The Mitigation Monitoring and Reporting Program
11 requires TJPA to enforce such monitoring and corrective action by requiring the same to be
12 included in contract documents and to “inspect contractors’ activities to ensure compliance.”
13 *Id.*

14 83. Similarly, in Mitigation Measure SG 4, TJPA undertook to “[u]nderpin ... to
15 protect existing structures from potential damage that could result from excessive ground
16 movements during construction.” *Id.* at Mitigation Measure SG 4.

17 84. In Mitigation Measure SG 5, TJPA undertook to “assure proper design and
18 construction of pile-supported foundations for structures to control potential settlement of the
19 surface.” Mitigation Measure SG 5 also stated that “[s]tability of excavations and resultant
20 impacts on adjacent structures can be controlled within tolerable limits by proper design and
21 implementation of the excavation shoring systems.” *Id.* at Mitigation Measure SG 5.

22 85. After it began construction of the Transit Center, TJPA—through Arup—
23 detected movement of the Tower that exceeded both “action trigger levels” and the
24 “maximum allowable movement” that TJPA was required to set and which it promised not to
25 exceed, but TJPA ignored its obligations under the FEIR and related construction
26 specifications, refusing to take any action to control the movement of the Tower, and to
27 prevent resulting impacts on the Tower. Instead, TJPA continued with the construction
28 activities that, on information and belief, it knew and knows now are causing movement of

1 the Tower.

2 86. The undertakings and obligations of the Mitigation Measures and the
3 Mitigation Monitoring Report Program were officially recognized and relied upon by TJPA to
4 ostensibly and allegedly avoid causing significant environmental impacts in connection with
5 construction of the Transit Center. When TJPA undertook those obligations, it was aware of
6 the Tower's plans and designs.

7 87. TJPA has not completed construction of the Transit Center, and its obligations
8 to comply with the Mitigation Measures are continuing obligations.

9 88. Despite the mandate to implement and enforce CEQA mitigation measures, no
10 enforcement obligations have been undertaken to date by TJPA to effectively avoid the
11 significant impacts identified in the FEIR. To the contrary, TJPA has breached its obligations
12 under the FEIR.

13 89. The HOA is the successor in interest to MSD under the Easement Agreement.
14 On or about August 23, 2016, the HOA gave notice to the TJPA of the HOA's claims against
15 the TJPA for damages to the extent required under Government Code section 910 *et seq.* The
16 TJPA denied the HOA's claims on or about October 7, 2016.

17 **VII. THE DEFECTS**

18 90. The Tower was constructed on an inadequate foundation system and has
19 experienced vertical displacement of over 16 inches. The Tower has settled differentially and
20 is out of plumb by over 12 inches. The Property also suffers from other defects, including
21 inadequate garage construction and waterproofing, defective windows, curtain wall corrosion
22 and water intrusion, inter-unit odor transmission, cracks, and alignment issues.

23 91. The following list of defects as defined in the California Civil Code is
24 preliminary and nonexclusive and, therefore, is given without prejudice to the HOA's right to
25 expand, amend, modify, or augment its claims and/or list of defects at any time, and the HOA
26 specifically reserves its right to do so herein:

- 27 a. Civil Code § 896(a)(2): Water intrusion through windows and their
28 systems and assemblies, including without limitation assemblies,

1 thresholds, framing, substrate, flashings and trim, if any, or their designed
2 or actual moisture barriers, including without limitation, internal barriers
3 within the systems themselves. Such deficiencies have led to water
4 intrusion into framing cavities and/or unit interiors, causing degradation of
5 materials.

- 6 b. Civil Code § 896(a)(7): Water intrusion through foundation system and
7 slabs. The deficiencies have led to water intrusion into adjacent systems,
8 including the Garage and basement areas in the Tower and Podium, causing
9 staining and degradation of materials.
- 10 c. Civil Code § 896(a)(14): Plumbing systems leak. These deficiencies have
11 led to water intrusion, staining, corrosion, and efflorescence, and
12 degradation of other building components.
- 13 d. Civil Code § 896(b)(1): Foundations, load-bearing walls, and slabs are
14 experiencing vertical and horizontal displacement due to underlying soil
15 settlement and inadequate foundation support, resulting in damage to
16 Garage walls, foundation walls, plumbing lines, sidewalks, and other
17 component parts of the Property. The foundations of the Tower and
18 Podium are experiencing settlement at a rate and depth well beyond the
19 design parameters, resulting in actual or potential cracking of walls, pipes,
20 joints, sidewalks, and other elements of the Property, water intrusion, and
21 improper sewer pipe flows.
- 22 e. Civil Code § 896(b)(2): Foundations, load-bearing walls, and slabs contain
23 significant vertical and horizontal displacement that has the potential to
24 cause the Property to be structurally unsafe. The foundations of the Tower
25 and Podium are experiencing settlement at a rate and depth well beyond the
26 design parameters, resulting in differential settlement of the Tower and
27 Podium structures.
- 28 f. Civil Code § 896(b)(4): The Tower was not constructed in material

1 compliance with the design criteria for earthquake and wind load
2 resistance, as set forth in the applicable government building codes,
3 regulations, and ordinances in effect at the time of original construction.

- 4 g. Civil Code § 896(c)(1): Soils and engineered foundation walls are causing
5 significant vertical and horizontal displacement of the Tower, Podium, and
6 Garage structures due to underlying soil settlement and/or inadequate
7 foundation support, resulting in damage to garage walls, foundation walls,
8 plumbing lines, and other component parts. The soil underlying the
9 Property is experiencing settlement at a rate and depth well beyond the
10 design parameters, resulting in cracking and water intrusion in the walls
11 and on the lower floor of the Garage, and spalling (or scaling) of the
12 concrete therein. In the Garage there is water intrusion through subgrade
13 walls and the lower-level garage floor surface, and cracking and spalling of
14 subgrade walls. In the Tower there is water intrusion through subgrade
15 walls.
- 16 h. Civil Code § 896(c)(3): Soil settlement under the Millennium Tower is
17 causing the land to become potentially unusable for its common purpose.
- 18 i. Civil Code § 896(g)(2): Cracks and separations have developed in the
19 exterior wall finishes. The exterior curtain wall is leaking.
- 20 j. Civil Code § 896(g)(3)(A): Manufactured window components have been
21 improperly manufactured and/or installed so as to interfere with their
22 useful life. In particular, window stay arms do not operate properly and are
23 failing.
- 24 k. Civil Code § 896(g)(6): There is unreasonable noise and odor transmission
25 between units.
- 26 l. Civil Code § 896(g)(15): The foregoing deficiencies violate the standard
27 that structures shall not be constructed in a manner that potentially impairs
28 their occupants' safety.

1 m. Civil Code § 897: The foregoing deficiencies violate the standard that other
2 deficiencies are actionable if they are the cause of damage.

3 **A. Compliance with RORA**

4 92. On or about August 12, 2016, the HOA provided notice to the Millennium
5 Defendants, the Millennium Founders, and Webcor of the HOA's claim under California
6 Civil Code section 6000 *et seq.* and sections 896 and 910 *et seq.* for damages arising out of, or
7 related to, deficiencies in the development, design, specifications, planning, supervision,
8 testing, observation of construction, and construction of the Property. The notice tolled all
9 applicable statutes of limitation and repose, whether in contract, statute, or decisional law, by
10 and against all potentially responsible parties, regardless of whether they were named in the
11 notice, including claims for indemnity, consistent with California Civil Code section 6000,
12 section 895 *et seq.*, and section 910 *et seq.* (and including Civil Code section 927). Since that
13 date, the HOA, Millennium Defendants, the Millennium Founders, Webcor, and certain others
14 have been engaged in the dispute resolution process identified in the statutes above.

15 93. The HOA complied with all pre-litigation procedures required under the Right
16 to Repair Action ("RORA"), California Civil Code sections 895 *et seq.*, with respect to all
17 defendants who the HOA alleges are "builders" pursuant to RORA section 911, which
18 includes all of the Millennium Defendants, and all defendants who are alleged to be
19 secondarily liable for the activities of the "builders," which includes the Millennium
20 Founders. The Millennium Founders are individuals who are liable for the activities of the
21 "builders" via secondarily liability as a result of their relationship with the Millennium
22 Defendants. The document providing notice was transmitted to counsel representing the
23 Millennium Defendants, the Millennium Founders, and Webcor on or about August 12, 2016
24 and provided adequate notice (actual or constructive) of the HOA's claims under California
25 Civil Code section 6000 *et seq.* and sections 896 and 910 *et seq.* to the Millennium
26 Defendants, the Millennium Founders, and Webcor.

27 94. The HOA's compliance with the prelitigation requirements of RORA was
28 effective as to all Millennium Defendants and the Millennium Founders because:

- a. The HOA provided actual notice to counsel for the Millennium Defendants and the Millennium Founders and complied with all other RORA prelitigation requirements under California Civil Code section 6000 *et seq.* and sections 896 and 910 *et seq.*
- b. Alternatively, the HOA substantially complied with all of the pre-litigation requirements of RORA for all of the Millennium Defendants and the Millennium Founders. The HOA's notice and the subsequent prelitigation process provided all of the Millennium Defendants and the Millennium Founders with an opportunity to repair the Millennium Tower, and did not prejudice the rights of any of the Millennium Defendants and the Millennium Founders under RORA.
- c. Alternatively, the HOA's compliance with all of the pre-litigation requirements of RORA was constructive as to the Millennium Defendants and the Millennium Founders except MSD (for which compliance is undisputed) because MSD is the alter ego of each of MSH, MPM, MP LLC, MPI, and the Millennium Founders and notice to the alter ego provided notice to the controlling individuals and entities.
- d. Alternatively, the HOA's compliance with all of the pre-litigation requirements of RORA is deemed satisfied because the Millennium Defendants and the Millennium Founders concealed the true identities of certain entities considered "builders" under RORA and led the HOA to believe that MSD was the only "builder" under RORA. At the time the pre-litigation notice was provided to counsel for all Millennium Defendants and the Millennium Founders, the HOA was unaware of the true identities of all of the "builders" under RORA but still provided actual written notice to the attorneys representing all Millennium Defendants and the Millennium Founders. Subsequently, in preparing

1 to file this lawsuit, the HOA conducted further investigations and
2 learned the true identities of parties that are also “builders” under
3 RORA and named those entities in the complaint.

- 4 e. Alternatively, requiring further notice or prelitigation procedures under
5 RORA by the HOA would be futile and would not serve the object and
6 purpose of RORA because MSH, MPM, MP LLC, MPI and the
7 Millennium Founders all contend that they do not meet the definition of
8 “builders,” who are the only entities entitled to the protections of the
9 prelitigation procedures.

10 95. Alternatively, the HOA is released from the requirements of the prelitigation
11 procedures of RORA as to MSH, MPM, MP LLC, MPI, and the Millennium Founders
12 pursuant to civil code section 911 of RORA because the name and address of the agent for
13 notice for each of MSH, MPM, MP LLC, MPI, and the Millennium Founders was not
14 included in the original sales documentation or provided to the Secretary of State.

15 96. California civil code section 911(e) states: “[a] builder shall maintain the name
16 and address of an agent for notice pursuant to this chapter with the Secretary of State or,
17 alternatively, elect to use a third party for that notice if the builder has notified the homeowner
18 in writing of the third party’s name and address, to whom claims and requests for information
19 under this section may be mailed. The name and address of the agent for notice or third party
20 shall be included with the original sales documentation and shall be initialed and
21 acknowledged by the purchaser and the builder’s sales representative.”

22 97. California civil code section 911(i) states: “[a]ny builder who fails to comply
23 with any of these requirements within the time specified is not entitled to the protection of this
24 chapter, and the homeowner is released from the requirements of this chapter and may
25 proceed with the filing of an action, in which case the remaining chapters of this part shall
26 continue to apply to the action.”

27 98. Because MSH, MPM, MP LLC, and MPI are “builders” under RORA and the
28 Millennium Founders are individuals who are liable for the activities of the “builders” via

1 secondarily liability; and because these entities and individuals failed to comply with the
 2 requirements of section 911(e), “the [HOA] is released from the requirements of [the RORA
 3 pre-litigation procedures] and may proceed with the filing of an action . . .” under section
 4 911(i).

6 **VIII. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Violation of California Civil Code § 895 *et seq.* Against the**
 9 **Millennium Defendants (all directly liable and, alternatively, secondarily liable based on**
 10 **theories described in §IV), Millennium Founders (all secondary liable based on theories**
 11 **described in §IV), Webcor (directly liable), Handel (directly liable), the Engineering**
 12 **Defendants (all directly liable except Langan, whose liability is based on being the**
 13 **successor to Treadwell & Rollo), and Does 1 Through 100, Inclusive**

14 99. The HOA re-alleges and incorporates by reference Paragraphs 1 through 98
 15 above as if fully set forth herein.

16 **A. Direct Liability**

17 100. Each of the five Millennium Defendants—MSD, MSH, MPM, MP LLC, and
 18 MPI, qualify as “builders” according to the definition provided in section 911(a) of RORA
 19 because each entity was in the business of selling residential units in the Tower to the public
 20 at the time of the sales of the Millennium Tower’s units or, in the alternative, was in the
 21 business of building, developing, or constructing the residential units in the Millennium
 22 Tower for public purchase. For example, MSD was a builder because it sold certain of the
 23 Tower’s residential units to the public. MPI was a builder because it was involved in the
 24 business of developing the Tower’s residential units through its marketing efforts on the
 25 Millennium Partners website, its participation in the site selection process, its participation in
 26 the structural engineering process, and its participation in various other design and
 27 engineering efforts. MPM was a builder because it was in the business of developing the
 28 Tower’s residential units through its efforts to sell various units in the Tower and its

1 participation in the landscaping design process. MP LLC and MSH were builders because
2 they were in the business of developing the Tower's residential units through their efforts to
3 manage the activities of their agents, including the Millennium Founders, relating to the
4 development of the Millennium Tower. MSH was also a builder because it participated in the
5 selection of the finishes for the units in the Millennium Tower and managed the process of
6 selling the Tower's units. Each of the Millennium Founders are alleged to be liable for the
7 activities of the "builders" because each of these three individuals was in the business of
8 selling residential units in the Tower to the public at the time of the sales of the Millennium
9 Tower's units or, in the alternative, was in the business of building, developing, or
10 constructing the residential units in the Millennium Tower for public purchase, through the
11 activities of their alter egos, the Millennium Defendants.

12 101. All of the Millennium Defendants, Webcor, Handel, and the Engineering
13 Defendants were under a statutory obligation to design, develop, and/or construct the
14 Millennium Tower in conformance with all applicable building codes and standards,
15 including but not limited to California Civil Code section 895 *et seq.*

16 102. All of the Millennium Defendants failed to develop the Millennium Tower in
17 conformance with the standard of California Civil Code section 895 *et seq.*, specifically the
18 functionality standard set forth in California Civil Code sections 896 and 897.

19 103. Webcor, Handel, and the Engineering Defendants also failed to design and/or
20 construct the Millennium Tower in conformance with the standard of California Civil Code
21 section 895 *et seq.*, specifically the functionality standard set forth in California Civil Code
22 sections 896 and 897.

23 104. Webcor, Handel and the Engineering Defendants caused, either in whole or in
24 part, the failure to design, develop, and/or construct the Millennium Tower in conformance
25 with the standards of Civil Code section 895 *et seq.*, as a result of their negligent acts and
26 omissions, as described *infra*.

27 105. The HOA seeks damages for the reasonable value of repairing any violation of
28 the standards found under California Civil Code section 895 *et seq.*; reasonable costs of

1 repairing any damages caused by repair efforts; reasonable costs of repairing and rectifying
 2 any damages resulting from the failure of the Millennium Tower to meet the section 895
 3 standards; reasonable costs of removing and replacing any improper repair; reasonable
 4 relocation and storage expenses; and reasonable investigative costs for each established
 5 violation of the section 895 standards.

6 **B. Secondary Liability**

7 106. Alternatively, the Millennium Defendants are secondarily liable for this cause
 8 of action pursuant to the theories described in §IV *supra*.

9 107. The Millennium Founders are secondarily liable for this cause of action
 10 pursuant to the theories described in §IV *supra*.

11 108. Langan is secondarily liable for this cause of action pursuant to the theory
 12 described in paragraph 41, *supra*.

13 109. The Millennium Defendants, the Millennium Founders, Webcor, Handel, the
 14 Engineering Defendants, and Does 1 Through 100, Inclusive are all jointly and severally
 15 liable for the HOA's damages caused by defendants' violations of Civil Code section 895 *et*
 16 *seq*.

17 **SECOND CAUSE OF ACTION**

18 **Negligence Against the Millennium Defendants (all directly liable, all also alternatively**
 19 **indirectly liable based on secondary liability theories described in §IV), Millennium**
 20 **Founders (all indirectly liable based on secondary liability theories described in §IV),**
 21 **Webcor (directly liable), Handel (directly liable), the Engineering Defendants (all**
 22 **directly liable except Langan, whose liability is based on being the successor to**
 23 **Treadwell & Rollo), ARUP (directly liable), the Salesforce Tower Defendants (directly**
 24 **liable), and Does 1 Through 100, Inclusive**

25 110. The HOA re-alleges and incorporates by reference Paragraphs 1 through 109
 26 above as if fully set forth herein.

27 **A. Direct Liability**

28 111. Each of the Millennium Defendants were and are a developer who participated

1 in the process of the design, engineering, manufacture, construction, and management of the
2 structures of the Millennium Tower designated for commercial use and who performed labor,
3 supplied materials, equipment, or services necessary for the building and construction of the
4 Millennium Tower with the knowledge that certain of the Tower's units would be sold to, and
5 used by, members of the public for commercial purposes.

6 112. For example, MSD was a developer because it sold or leased certain of the
7 Tower's commercial units. MPI was a developer because of its marketing efforts on the
8 Millennium Partners website, its participation in the site selection process, its participation in
9 the structural engineering process, and its participation in various other design and
10 engineering efforts relating to the Tower's commercial units. MPM was a developer because
11 of its efforts to market various commercial units in the Tower and its participation in the
12 landscaping design process. MP LLC and MSH were developers because of their efforts to
13 manage the activities of their agents, including the Millennium Founders, relating to the
14 development of the Millennium Tower, including its commercial units. MSH was also a
15 developer because it participated in the selection of the finishes for the commercial units in
16 the Millennium Tower and managed the process of leasing or selling the Tower's commercial
17 units.

18 113. Each of the Webcor, Handel, and the Engineering Defendants were and are a
19 contractor, general contractor, subcontractor, supplier, architect, engineer, or other person,
20 entity, or professional who participated in the process of the design, engineering,
21 manufacture, construction, and management of condominium units, buildings, improvements,
22 and structures of the Millennium Tower and who performed labor, supplied materials,
23 equipment, and/or services necessary for the building and construction of the Millennium
24 Tower with the knowledge that the Tower's units would be leased or sold to, and used by,
25 members of the public for both commercial and residential purposes.

26 114. In so doing, the Millennium Defendants, Webcor, Handel, and the
27 Engineering Defendants caused the Millennium Tower to be designed, engineered,
28 constructed, and/or managed through their own works of labor, their supplying of materials,

1 equipment, and services, and through causing other contractors and subcontractors to perform
2 works of labor to supply materials, equipment, and services in order to properly complete and
3 manage the Millennium Tower and subject structures so that it could be leased or sold and
4 used by members of the public for both commercial and residential purposes.

5 115. Each of the Millennium Defendants, Webcor, Handel, and the Engineering
6 Defendants negligently, carelessly, tortiously, and wrongfully failed to use reasonable care in
7 the analysis, preparation, design, manufacture, construction, and/or management of the real
8 property and structures of the Millennium Tower, including those aspects to be used for
9 commercial purposes, thereby causing damages, including, among other things, excessive and
10 differential settlement of the Tower and the Podium, and defects and deficiencies in the
11 foundation, Garage, subterranean structure, curtain wall, exterior wall panels, skylights,
12 common areas, plaza and terrace decks, unit interiors (including but not limited to excessive
13 noise and odors moving between units), exterior doors, roofing, and utility connections.

14 116. For example, MSD failed to use reasonable care in selecting the inadequate
15 foundation system, inadequate garage construction and waterproofing, defective windows,
16 and other structural systems leading to the curtain wall corrosion and water intrusion, inter-
17 unit odor transmission, cracks, and alignment issues. In addition, each of MSH, MPM, MP
18 LLC and MPI failed to use reasonable case in directing the activities of the Engineering
19 Defendants.

20 117. Each of the Millennium Defendants, Webcor, Handel, and the Engineering
21 Defendants knew or should have known that if the Millennium Tower was not properly or
22 adequately designed, engineered, supervised, constructed, and/or managed, the owners and
23 commercial users would be substantially damaged thereby, and the condominium units,
24 buildings, improvements, and structures would be defective, including those related to the
25 commercial units.

26 118. Each of the Millennium Defendants, Webcor, Handel, and the Engineering
27 Defendants were under a duty to exercise ordinary care to avoid reasonably foreseeable injury
28 to users and purchasers of the condominium units, buildings, improvements, and structures,

1 including those designated for commercial use, and knew or should have foreseen with
2 reasonable certainty that leasees, purchasers, and/or commercial users would suffer damages
3 if the Millennium Defendants, Webcor, Handel, and the Engineering Defendants failed to
4 perform their duty to cause the Property and the structures of the Millennium Tower to be
5 designed, engineered, constructed, and managed in a proper workmanlike manner and
6 fashion.

7 119. Each of the Millennium Defendants, Webcor, Handel, and the Engineering
8 Defendants breached their duty to exercise ordinary care. The Millennium Defendants,
9 Webcor, Handel, and the Engineering Defendants failed and neglected to perform their work,
10 labor, and services properly or adequately. The Millennium Defendants, Webcor, Handel,
11 and the Engineering Defendants so negligently performed their work, labor, and/or services
12 such that the premises and structures of the Millennium Tower were designed, engineered,
13 constructed, and/or managed improperly, negligently, carelessly, and/or not in a workmanlike
14 manner.

15 120. Defendant Arup was hired by the TIPA's architect to provide geotechnical
16 engineering services relating to the lateral support for the Millennium Tower made necessary
17 by the excavation for the Transit Center. Arup performed work, labor, and/or services for the
18 soils evaluation, support wall, and buttress pile wall between the Transit Center and the
19 Millennium Tower for the purpose of providing lateral and subjacent support to the
20 Millennium Tower to limit any sinking caused by the construction of the Transit Center.

21 121. Arup was under a duty to exercise ordinary care as engineer, subcontractor,
22 manager, or otherwise to avoid reasonably foreseeable injury to users and purchasers of the
23 condominium units, buildings, improvements, and structures of and in the Millennium Tower.
24 Arup knew or should have foreseen with reasonable certainty that the HOA and its members
25 would suffer damages if the soils evaluation, support wall, and buttress pile wall were not
26 properly or adequately designed, engineered, supervised, and/or constructed.

27 122. Arup breached its duty to exercise ordinary care. On information and belief,
28 the HOA alleges that Arup negligently, carelessly, tortiously, and wrongfully failed to use

1 reasonable care in the analysis, preparation, design, manufacture, and/or construction of the
2 soils evaluation, lateral support, and/or buttress pile wall, thereby causing damage to the
3 Millennium Tower, including, among other things, excessive and differential settlement of the
4 Tower and Podium, and defects and deficiencies in the Garage.

5 123. The Salesforce Tower Defendants were and are the developers, builders,
6 sellers, managers or other entities primarily responsible for the construction of the Salesforce
7 Tower and who performed labor and supplied materials, equipment, and/or services necessary
8 for the construction of the Salesforce Tower. In so doing, the Salesforce Tower Defendants,
9 in their capacity as developers, builder, sellers, managers, or otherwise, caused the Salesforce
10 Tower to be designed, engineered, constructed, and/or managed through their own works of
11 labor, their supplying of materials, equipment, and services, and through causing other
12 contractors and subcontractors to perform works of labor to supply materials, equipment, and
13 services in order to construct and manage the Salesforce Tower.

14 124. The Salesforce Tower Defendants were and are under a duty to exercise
15 ordinary care or otherwise to avoid reasonably foreseeable injury to the HOA and its
16 members. The Salesforce Tower Defendants knew or should have foreseen with reasonable
17 certainty that the HOA and its members would suffer damages if the Salesforce Tower was
18 not properly or adequately designed, engineered, supervised, and/or constructed.

19 125. The Salesforce Tower Defendants breached their duty to exercise ordinary
20 care. On information and belief, the HOA alleges that the Salesforce Tower Defendants
21 negligently, carelessly, tortiously, and wrongfully failed to use reasonable care in the analysis,
22 preparation, design, and/or construction of the Salesforce Tower, thereby causing damage to
23 the Millennium Tower, including, among other things, excessive and differential settlement of
24 the Tower and Podium, and defects and deficiencies in the Garage. In particular, the TJPA
25 and the Salesforce Tower defendants acted with conscious disregard of the foreseeable risk of
26 harm that the excavation and dewatering work at the Transit Center and the Salesforce Tower
27 might cause injury to the Millennium Tower by failing to take adequate protective measures
28 to secure, monitor, or otherwise mitigate effects to the Millennium Tower prior to and during

1 the excavation and dewatering work at the Transit Center and the Salesforce Tower.

2 126. As a direct and proximate result of these breaches, the HOA has suffered and
3 will continue to suffer damages in an amount to be proved at trial.

4 **B. Secondary Liability**

5 127. Alternatively, the Millennium Defendants are secondarily liable for this cause
6 of action pursuant to the theories described in §IV *supra*.

7 128. The Millennium Founders are secondarily liable for this cause of action
8 pursuant to the theories described in §IV *supra*.

9 129. Langan is secondarily liable for this cause of action pursuant to the theory
10 described in paragraph 41, *supra*.

11 130. The Millennium Defendants, the Millennium Founders, Webcor, Handel, the
12 Engineering Defendants, ARUP, the Salesforce Tower Defendants, and Does 1 Through 100,
13 Inclusive are all jointly and severally liable for the HOA's damages caused by defendants'
14 negligence.

15 **THIRD CAUSE OF ACTION**

16 **Breach of Express Warranties Against MSD (directly liable), Millennium Defendants (all**
17 **except MSD secondarily liable based on theories described in §IV), Millennium**
18 **Founders (all secondary liable based on theories described in §IV), and Does 1 Through**
19 **100, Inclusive**

20 131. The HOA re-alleges and incorporates by reference Paragraphs 1 through 130
21 above as if fully set forth herein.

22 **A. Direct Liability**

23 132. Pursuant to California Civil Code section 5980, the HOA has standing to
24 institute litigation "in its own name as the real party in interest and without joining with it the
25 members, in matters pertaining to the following: . . . (b) Damage to the common area. (c)
26 Damage to a separate interest that the association is obligated to maintain or repair [or] (d)
27 Damage to a separate interest that arises out of, or is integrally related to, damage to the
28 common area or a separate interest that the association is obligated to maintain or repair."

1 133. As a result of California Civil code section 5980, the HOA can bring a cause of
2 action based on a breach of an express warranty provided to a homeowner that relates to
3 damage to the common area of the Millennium Tower, a separate interest of a homeowner
4 that the HOA is obligated to maintain or repair, or a separate interest of a homeowner that
5 arises out of, or is integrally related to, damage to the common area or a separate interest that
6 the association is obligated to maintain or repair. *See Windham at Carmel Mountain Ranch*
7 *Assn. v. Superior Court*, 109 Cal. App. 4th 1162, 1175 (2003) (“the legislative intent of
8 section [5980] is to give associations the standing to sue as real parties in interest in all types
9 of actions for damage to common areas”).

10 134. Accordingly, the HOA brings this cause of action based on express warranties
11 made by the seller of the Tower’s units (MSD) to the buyer of the Tower’s units
12 (homeowners) on which the homeowners reasonably relied and which MSD breached. These
13 warranties related to the conditions of the common areas, separate interests that the HOA is
14 obligated to maintain or repair, and separate interest that arises out of, or is integrally related
15 to, damage to the common area or a separate interest that the HOA is obligated to maintain or
16 repair.

17 135. MSD was a seller of various units in the Millennium Tower to individual
18 homeowners, who are members of the HOA.

19 136. MSD expressly warranted to homeowners of units in the Millennium Tower
20 through sales and advertising materials and through sales representatives for the Property that
21 the Millennium Tower was designed and constructed in a commercially reasonable and
22 habitable manner when offering the units of the Millennium Tower for sale to the general
23 public for use as residences. For instance, the Millennium Tower San Francisco Sales Manual
24 states, “With its superior design, highest quality, thoughtful service, and extraordinary
25 amenities, we believe Millennium Tower will be the best residential tower ever built in San
26 Francisco.” Sales representatives of MSD provided prospective homeowners with sales
27 materials containing representations about the superior and luxury quality of the building.

28 137. The sales representatives who used this sales manual in inducing purchases of

1 the Tower' units were acting on behalf of MSD when doing so, and were acting within the
2 scope of their employment and/or agency relationship with MSD when doing so.

3 138. These express warranties were made when MSD knew that the building was
4 settling excessively and differentially.

5 139. Homeowners relied on the express warranties of MSD discussed in paragraph
6 136 *supra* when they purchased condominium units within the Millennium Tower from MSD,
7 believing at the time of sale that a luxury building would, at a minimum, possess a foundation
8 that was not massively defective.

9 140. The massively defective foundation as well as the other defects described in
10 section VII *supra* fall with the definition of “(b) Damage to the common area. (c) Damage to
11 a separate interest that the association is obligated to maintain or repair. [or] (d) Damage to a
12 separate interest that arises out of, or is integrally related to, damage to the common area or a
13 separate interest that the association is obligated to maintain or repair.” Cal. Civ. Code §
14 5980.

15 141. MSD breached these express warranties by selling the condominium units in
16 the Millennium Tower with the above-described deficiencies in the design, specification,
17 planning, supervision, development, improvement, and repair thereof.

18 142. As a direct and proximate result of the breach of express warranties by MSD
19 the HOA and its members suffered damages stemming from the excessive and differential
20 settlement of the Tower and Podium structures, and defects and deficiencies in the foundation,
21 Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas,
22 plaza and terrace decks, unit interiors (including but not limited to noise and odors moving
23 between units), exterior doors, roofing, and utility connections as set forth herein.

24 **B. Secondary Liability**

25 143. The Millennium Defendants other than MSD are secondarily liable for this
26 cause of action pursuant to the theories described in §IV *supra*.

27 144. The Millennium Founders are secondarily liable for this cause of action
28 pursuant to the theories described in §IV *supra*.

145. MSD, the remaining Millennium Defendants, the Millennium Founders, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' breach of express warranty.

FOURTH CAUSE OF ACTION

Breach of Implied Warranties Against MSD (directly liable), Millennium Defendants (all except MSD secondarily liable based on theories described in §IV), Millennium Founders (all secondarily liable based on theories described in §IV), Webcor (directly liable), and Does 1 Through 100, Inclusive

146. The HOA re-alleges and incorporates by reference Paragraphs 1 through 145 above as if fully set forth herein.

A. Direct Liability

147. Pursuant to California Civil Code section 5980, the HOA has standing to institute litigation "in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following: . . . (b) Damage to the common area. (c) Damage to a separate interest that the association is obligated to maintain or repair [or] (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair."

148. As a result of California Civil code section 5980, the HOA can bring a cause of action for breach of an implied warranty provided to a homeowner that relates to damage to the common area of the Millennium Tower, a separate interest of a homeowner that the HOA is obligation to maintain or repair, or a separate interest of a homeowner that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair. *See Windham at Carmel Mountain Ranch Assn. v. Superior Court*, 109 Cal. App. 4th 1162, 1175 (2003) ("the legislative intent of section [5980] is to give associations the standing to sue as real parties in interest in all types of actions for damage to common areas").

149. Accordingly, the HOA brings this cause of action based on implied warranties made by the seller of the Tower's units (MSD) and the (Webcor). These warranties related to

1 the conditions of the common areas, separate interests that the HOA is obligated to maintain
2 or repair, and separate interest that arises out of, or is integrally related to, damage to the
3 common area or a separate interest that the HOA is obligated to maintain or repair.

4 150. MSD was the seller of various units in the Millennium Tower to individual
5 homeowners, who are members of the HOA.

6 151. MSD provided prospective buyers with a written statement disclaiming any
7 knowledge of any substantial defects as required by California Civil Code § 1134(b). This
8 “Property Disclosure and Information Statement,” dated May 2011, failed to disclose that the
9 building was experiencing excessive vertical and differential settlement. This disclosure
10 constituted an implied warranty that no substantial defects existed in the common areas, the
11 separate interests the HOA is obligated to maintain and repair, or the separate interests that
12 are integrally related to the common areas and separate interests.

13 152. In addition, Webcor impliedly warranted that the Millennium Tower was
14 designed and constructed in a commercially reasonable and workmanlike manner and
15 consistent with the standards set forth in California civil code sections 895 through 897.

16 153. MSD impliedly warranted that the Millennium Tower was designed and
17 constructed in a commercially reasonable and workmanlike manner when MSD offered the
18 condominium units of the Millennium Tower for sale to the general public and delegated the
19 duty of maintenance and repair to the HOA.

20 154. The Millennium Tower was not of proper durability, reliability, and/or general
21 quality and not fit for its intended use.

22 155. As a direct and proximate result of MSD’s and Webcor’s breaches, the HOA
23 has suffered and will continue to suffer damages in an amount to be proved at trial.

24 156. Individual homeowners relied on the implied warranties of MSD and Webcor
25 when they purchased condominium units within the Millennium Tower from MSD.

26 157. The massively defective foundation as well as the other defects described in
27 section VII supra fall with the definition of “(b) Damage to the common area. (c) Damage to
28 a separate interest that the association is obligated to maintain or repair. [or] (d) Damage to a

1 separate interest that arises out of, or is integrally related to, damage to the common area or a
 2 separate interest that the association is obligated to maintain or repair.” Cal. Civ. Code §
 3 5980.

4 **B. Secondary Liability**

5 158. The Millennium Defendants other than MSD are secondarily liable for this
 6 cause of action pursuant to the theories described in §IV *supra*.

7 159. The Millennium Founders are secondarily liable for this cause of action
 8 pursuant to the theories described in §IV *supra*.

9 160. MSD, the remaining Millennium Defendants, the Millennium Founders,
 10 Webcor, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA’s
 11 damages caused by defendants’ breach of implied warranty.

12 **FIFTH CAUSE OF ACTION**

13 **Strict Liability Against the Millennium Defendants (all directly liable, all also**
 14 **secondarily liable based on theories described in §IV), Millennium Founders (all**
 15 **secondarily liable based on theories described in §IV), and Does 1 Through 100,**
 16 **Inclusive**

17 161. The HOA re-alleges and incorporates by reference Paragraphs 1 through 160
 18 above as if fully set forth herein.

19 **A. Direct Liability**

20 162. All of the Millennium Defendants are, and at all times relevant were, engaged
 21 in the mass production of commercial units for lease, sale and/or use by members of the
 22 general public.

23 163. For example, MSD was involved in the production of the Tower’s units
 24 because it leased or sold certain of the Tower’s commercial units to the public. MPI was
 25 involved in the production of the Tower’s units because it developed the Tower’s commercial
 26 units through its marketing efforts on the Millennium Partners website, participated in the site
 27 selection process, participated in the structural engineering process, and participated in
 28 various other design and engineering efforts. MPM was involved in the production of the

1 Tower's commercial units because it leased or sold various units in the Tower and its
2 participated in the landscaping design process. MP LLC and MSH were involved in the
3 production of the Tower's commercial units because they managed the activities of their
4 agents, including the Millennium Founders, relating to the development of the Millennium
5 Tower. MSH was also involved in the selection of the finishes for the commercial units in the
6 Millennium Tower and managed the process of selling the Tower's commercial units.

7 164. In or about 2005–2013, all of the Millennium Defendants participated in the
8 design, development, construction, marketing, leasing/or and sale of commercial units,
9 buildings, structures, and improvements for the Millennium Tower. In doing so, all of the
10 Millennium Defendants developed the Millennium Tower with units for commercial use.

11 165. In these capacities, all of the Millennium Defendants knew that the
12 condominium units, buildings, and structures would be leased or sold to, and used by,
13 members of the general public for commercial purposes. All of the Millennium Defendants
14 knew, or reasonably should have known, that the persons who would lease or purchase the
15 commercial units would do so without inspection for the defects set forth herein.

16 166. All of the Millennium Defendants impliedly warranted that the real property
17 and structures in the Millennium Tower, including, among other things, the foundation,
18 Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas,
19 plaza and terrace decks, unit interiors, exterior doors, roofing, and utility connections, were of
20 merchantable quality and were erected in a reasonable workmanlike manner.

21 167. All of the Millennium Defendants are strictly liable and responsible to the
22 HOA for all damages suffered as a result of the defects and deficiencies relating to the
23 Millennium Tower's commercial units, including, among other things, excessive and
24 differential settlement of the Tower and Podium, and defects and deficiencies in the
25 foundation, Garage, subterranean structure, curtain wall, exterior wall panels, skylights,
26 common areas, plaza and terrace decks, unit interiors (including but not limited to excessive
27 odor transfers between units), exterior doors, roofing, and utility connections.

28 168. Within the past year, the HOA discovered that the underlying soils and

1 component structures of the Millennium Tower are, and have been, experiencing defective
2 conditions, including, among other things, excessive and differential settlement of the Tower
3 and the Podium, and defects and deficiencies in the foundation, Garage, subterranean
4 structure, curtain wall, exterior wall panels, skylights, common areas, plaza and terrace decks,
5 unit interiors (including but not limited to odors moving between units), exterior doors,
6 roofing, and utility connections. Such defective components are not of merchantable quality,
7 nor were they designed, erected, constructed, or installed in a workmanlike manner, but
8 instead are defective and, as now known, demonstrate improper, nonexistent, and/or
9 inadequate design, construction, manufacture and/or installation. The structures may be
10 additionally defective in ways and to an extent not precisely known, but will be established at
11 the time of trial according to proof.

12 169. The HOA properly notified all of the Millennium Defendants and the
13 Millennium Founders of the defective conditions of the Millennium Tower. Notwithstanding
14 such notice, all of the Millennium Defendants and the Millennium Founders have failed to
15 acknowledge responsibility for all of the defective conditions or otherwise cause the
16 appropriate restoration and/or repair to be made at their cost and expense.

17 170. The items generally referred to and particularly described herein were latent
18 deficiencies in that the above-described defects arose out of, were attributable to, and are
19 directly and proximately caused by the above-described latent deficiencies in the design,
20 specifications, planning, supervision, construction, observation of construction, development,
21 and improvement of the Millennium Tower. Before the HOA discovered them, such defects
22 and deficiencies could not have been discovered by the exercise of reasonable diligence.

23 171. At all times relevant, the HOA relied on the skill of each of the Millennium
24 Defendants to produce condominiums that are reasonably fit for their intended purpose.

25 172. The HOA is still not fully aware of all the causes, the full extent, and possible
26 legal significance of the results or causes of the conditions described above due to the loss
27 being continual and latent. The HOA is an organization of lay individuals who require expert
28 consultation to provide a review of the property conditions. The HOA is still not informed of

1 any causes or entire results of the full extent of these latent deficiencies, nor is the HOA fully
2 informed of the potential causes of the resultant distress due to the loss being continual and
3 latent.

4 173. Any and all repair attempts by any of the Millennium Defendants failed to
5 adequately correct the damages and deficiencies in the Millennium Tower thereby resulting in
6 further property damage.

7 174. Instead of causing the necessary and required construction and repair of the
8 Millennium Tower, all of the Millennium Defendants caused cosmetic, temporary, or
9 ineffective repairs to be made to various portions of the Millennium Tower for the purpose of
10 leading the HOA and its members to believe that the Millennium Defendants were resolving
11 and correcting all deficiencies. By virtue of such conduct, each of the Millennium Defendants
12 are estopped to assert that the HOA may not seek the damages herein sought.

13 175. The above-described defects arose out of, were attributed to, and are directly
14 and proximately caused by the above-described deficiencies in the design, specification,
15 planning, supervision, development, and improvement of the Millennium Tower and faulty
16 repairs thereto, and before such defects were discovered by the HOA, they could not have
17 been discovered by the exercise of reasonable diligence. As a direct and proximate result of
18 the conduct herein alleged, the HOA has suffered damages in an amount to be proven at the
19 time of trial.

20 **B. Secondary Liability**

21 176. Alternatively, the Millennium Defendants are secondarily liable for this cause
22 of action pursuant to the theories described in §IV *supra*.

23 177. The Millennium Founders are secondarily liable for this cause of action
24 pursuant to the theories described in §IV *supra*.

25 178. The Millennium Defendants, the Millennium Founders, and Does 1 through
26 100, Inclusive are all jointly and severally liable for the HOA's damages for which defendants
27 are strictly liable.

28

SIXTH CAUSE OF ACTION

Negligent Misrepresentation Against Sean Jeffries (directly liable); Millennium Defendants (all secondarily liable based on agency, respondeat superior, or secondary liability theories described in §IV); and Millennium Founders (all secondarily liable based on theories described in §IV), and Does 1 Through 100, Inclusive

179. The HOA re-alleges and incorporates by reference Paragraphs 1 through 178 above as if fully set forth herein.

A. Direct Liability

180. Sean Jeffries represented on February 28, 2014 to the HOA that he was not “aware to date of any information that gives us concern for the safety of the building or any significant impact on the structure.”⁴⁸ This representation was demonstrably false, which Sean Jeffries knew at the time he made it, as the Tower had already exceeded the revised upper limit of the total expected lifetime settlement.

181. At the time, Sean Jeffries did not have any reasonable ground for believing his February 28, 2014 representation was true. As Sean Jeffries was aware, the Tower was originally predicted to sink no more than 4 to 6 inches over its lifetime, and that the predicted lifetime settlement of the Tower was later revised to 10.3 to 12.3 inches. At the time of his representation on February 28, 2014, Sean Jeffries also knew that the Tower had already exceeded its revised predicted lifetime settlement. Sean Jeffries also knew that the TJPA’s construction activities would likely cause further differential settlement.

182. Sean Jeffries also made periodic presentations to the HOA at the executive session board meetings where he repeatedly assured the HOA that Millennium Partners was monitoring the building, was not aware of any concerns regarding building settlement, and that any settlement was within normal limits. Sean Jeffries made these misrepresentations orally to the members of the HOA’s executive committee at certain executive board meeting sessions between January 2014 and January 2016. These meetings took place on or around January 2014, May 2014, October 6, 2014, November 2014, January 26, 2015, February 23,

⁴⁸ Letter from Sean Jeffries to Jeff Peters re Millennium Tower (Feb. 28, 2016).

1 2015, and October 19, 2015, January 14, 2016 in various conference rooms in the Millennium
2 Tower. Sean Jeffries also did not have any reasonable ground for believing these
3 representations were accurate when he made them because he knew that the Tower had
4 already exceeded its revised predicted lifetime settlement, the settlement amount was not
5 normal and was instead abnormal, and that the TJPA's construction activities would likely
6 cause further differential settlement.

7 183. In a further misrepresentation to the HOA, Sean Jeffries signed the Amended
8 Easement Agreement with the TJPA, purporting to represent the HOA but without the
9 authority to do so, which resulted in his, not the HOA's, receiving monitoring reports from the
10 TJPA. At the time, Sean Jeffries did not have any reasonable ground for believing he was
11 authorized to sign the Amended Easement Agreement with the TJPA on behalf of the HOA
12 without the HOA's authority to do so. After Sean Jeffries misrepresented that he was
13 authorized to sign the Amended Easement Agreement with the TJPA on behalf of the HOA,
14 Sean Jeffries or an employee and/or agent of one or more of the Millennium Defendants, and
15 not the HOA, began receiving monitoring data collected by the TJPA, which further revealed
16 that the Tower was settling vertically and differentially in excess of the design specifications,
17 including the revised expected maximum settlement. Sean Jeffries did not disclose this data
18 to the HOA, but instead concealed it.

19 184. Sean Jeffries intended that the HOA would rely on these representations by
20 failing to take action to correct the defects and damage to the Millennium Tower of which it
21 was not aware.

22 185. The HOA reasonably relied on Sean Jeffries' representations because the HOA
23 reasonably believed that Sean Jeffries would fulfill his duty of disclosure.

24 186. In reliance on Sean Jeffries' representations, the HOA did not take corrective
25 action to prevent continuing and future damage.

26 187. The HOA's reliance on Sean Jeffries' representations was a substantial factor
27 in causing damages to the HOA, including by diminishing the value of the common areas of
28 Millennium Tower and by delaying any corrective action that could reduce the extent of

1 damage.

2 188. Because Sean Jeffries withheld information from the HOA, Sean Jeffries
3 necessarily possess full information concerning the facts of their own negligent acts.

4 189. As a direct and proximate result of Sean Jeffries' negligent conduct, the HOA
5 has suffered and will continue to suffer damages in an amount to be proved at trial.

6 **B. Secondary Liability**

7 190. When making these negligent misrepresentations, Sean Jeffries was acting on
8 behalf of MSD, for which he is an agent. Sean Jeffries was acting as the agent of MSD and
9 made the above misrepresentations in the scope of his authority as an agent of MSD.

10 191. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is
11 the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and made
12 these misrepresentations in the scope of his authority as an agent of MSH and/or within the
13 scope of this employment as an employee of MSH.

14 192. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is
15 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM
16 and his conduct was in the scope of his authority as an agent of MPM and/or within the scope
17 of this employment as an employee of MPM.

18 193. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he
19 is an agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP
20 LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within
21 the scope of this employment as an employee of MP LLC.

22 194. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is
23 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and
24 his conduct was in the scope of his authority as an agent of MPI and/or within the scope of
25 this employment as an employee of MPI.

26 195. Alternatively, the Millennium Defendants are secondarily liable for this cause
27 of action pursuant to the theories described in §IV *supra*.

28 196. The Millennium Founders are secondarily liable for this cause of action

1 pursuant to the theories described in §IV *supra*.

2 197. Sean Jeffries, the Millennium Defendants, the Millennium Founders, and Does
3 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by
4 their negligent misrepresentation.

5 **SEVENTH CAUSE OF ACTION**

6 **Fraudulent Misrepresentation Against Sean Jeffries (directly liable); Millennium**
7 **Defendants (all indirectly liable based on agency, respondeat superior or secondary**
8 **liability theories described in §IV); and Millennium Founders (all secondarily liable**
9 **based on liability theories described in §IV), and Does 1 Through 100, Inclusive**

10 198. The HOA re-alleges and incorporates by reference Paragraphs 1 through 197
11 above as if fully set forth herein.

12 **A. Direct Liability**

13 199. Sean Jeffries represented on February 28, 2014 to the HOA that he was not
14 "aware to date of any information that gives us concern for the safety of the building or any
15 significant impact on the structure."⁴⁹ This representation was demonstrably false, which
16 Sean Jeffries knew at the time he made it, as Sean Jeffries knew that the Tower had already
17 exceeded the revised upper limit of the total expected lifetime settlement.

18 200. At the time, Sean Jeffries knew that the Tower was originally predicted to sink
19 no more than 4 to 6 inches over its lifetime, and that the predicted lifetime settlement of the
20 Tower was later revised to 10.3 to 12.3 inches. At the time of the representation on February
21 28, 2014, Sean Jeffries knew that the Tower had already exceeded its revised predicted
22 lifetime settlement. Sean Jeffries also knew that the TJPA's construction activities would
23 likely cause further differential settlement.

24 201. On information and belief, Sean Jeffries also made periodic presentations to
25 the HOA at the executive session board meetings where he repeatedly assured the HOA that
26 Millennium Partners was monitoring the building, was not aware of any concerns regarding
27 building settlement, and that any settlement was within normal limits. These

28 ⁴⁹ Letter from Sean Jeffries to Jeff Peters re Millennium Tower (Feb. 28, 2016).

1 misrepresentations were made orally by Sean Jeffries to the members of the HOA's executive
2 committee at certain executive board meeting sessions between January 2014 and January
3 2016. These meetings took place on or around January 2014, May 2014, October 6, 2014,
4 November 2014, January 26, 2015, February 23, 2015, and October 19, 2015, January 14,
5 2016 in various conference rooms in the Millennium Tower. Sean Jeffries knew these
6 representations were not accurate when he made them because he knew that the Tower had
7 already exceeded its revised predicted lifetime settlement, the settlement amount was not
8 normal and was instead abnormal, and that the TJPA's construction activities would likely
9 cause further differential settlement.

10 202. In a further misrepresentation to the HOA, Sean Jeffries signed the Amended
11 Easement Agreement with the TJPA, purporting to represent the HOA but without the
12 authority to do so, which resulted in his, not the HOA's, receiving monitoring reports from the
13 TJPA. After Sean Jeffries misrepresented that he was authorized to sign the Amended
14 Easement Agreement with the TJPA on behalf of the HOA, Sean Jeffries or another employee
15 or agent of one of the Millennium Defendants, and not the HOA, began receiving monitoring
16 data collected by the TJPA, which further revealed that the Tower was settling vertically and
17 differentially in excess of the design specifications, including the revised expected maximum
18 settlement. Sean Jeffries did not disclose this data to the HOA, but instead concealed it.

19 203. Sean Jeffries intended that the HOA would rely on this representation by
20 failing to take action to correct the defects and damage to the Millennium Tower of which it
21 was not aware.

22 204. The HOA reasonably relied on Sean Jeffries' representations because the HOA
23 reasonably believed that Sean Jeffries would fulfill his duty of disclosure.

24 205. In reliance on Sean Jeffries' representations, the HOA did not take corrective
25 action to prevent continuing and future damage.

26 206. The HOA's reliance on Sean Jeffries' representations caused damages to the
27 HOA, including by diminishing the value of the common areas of Millennium Tower and by
28 delaying any corrective action that could reduce the extent of damage.

1 207. Because Sean Jeffries intentionally withheld information from the HOA, Sean
2 Jeffries necessarily possesses full information concerning the facts of his own fraudulent acts.

3 208. As a direct and proximate result of Sean Jeffries' fraudulent conduct, the HOA
4 has suffered and will continue to suffer damages in an amount to be proved at trial.

5 209. Because Sean Jeffries' conduct was malicious, oppressive, and fraudulent, and
6 taken in knowing disregard of his legal duties, punitive damages should be awarded. Sean
7 Jeffries knew that the construction and design of the Millennium Tower was deficient and that
8 the Millennium Tower was suffering from vertical and differential settlement, and
9 consciously and recklessly disregarded the probability of injury to residents of Millennium
10 Tower units and to the common areas of the Millennium Tower by developing and marketing
11 the Millennium Tower despite knowing that construction methods and design plans were
12 deficient, and by continuing to market the units after receiving information that the building
13 was sinking and tilting.

14 **B. Secondary Liability**

15 210. When making these fraudulent misrepresentations, Sean Jeffries was acting on
16 behalf of MSD, for which he is an agent. Sean Jeffries was acting as the agent of MSD and
17 his conduct was in the scope of his authority as an agent of MSD.

18 211. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is
19 the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and his
20 conduct was in the scope of his authority as an agent of MSH and/or within the scope of this
21 employment as an employee of MSH.

22 212. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is
23 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM
24 and his conduct was in the scope of his authority as an agent of MPM and/or within the scope
25 of this employment as an employee of MPM.

26 213. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he
27 is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP
28 LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within

1 the scope of this employment as an employee of MP LLC.

2 214. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is
3 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and
4 his conduct was in the scope of his authority as an agent of MPI and/or within the scope of
5 this employment as an employee of MPI.

6 215. Alternatively, the Millennium Defendants are secondarily liable for this cause
7 of action pursuant to the theories described in §IV *supra*.

8 216. The Millennium Founders are secondarily liable for this cause of action
9 pursuant to the theories described in §IV *supra*.

10 217. Sean Jeffries, the Millennium Defendants, the Millennium Founders, and Does
11 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by
12 their fraudulent misrepresentation.

13 **EIGHTH CAUSE OF ACTION**

14 **Fraudulent Concealment Against Sean Jeffries and Luciano (directly liable);**
15 **Millennium Defendants (all secondarily liable based on agency, respondeat superior, or**
16 **secondary liability theories described in §IV); and Millennium Founders (all secondarily**
17 **liable based on theories described in §IV), and Does 1 Through 100, Inclusive**

18 218. The HOA re-alleges and incorporates by reference Paragraphs 1 through 217
19 above as if fully set forth herein.

20 **A. Direct Liability**

21 219. As designated contact for receipt of monitoring data from the TJPA, Sean
22 Jeffries owed a fiduciary duty to the HOA, its board, and its members, who relied on Sean
23 Jeffries to provide documentation and information regarding the condition of the Millennium
24 Tower and to direct certain remediation measures.

25 220. As a member of the HOA Board, Luciano owed a fiduciary duty to the HOA
26 and its members. In making certain partial disclosures to the HOA and its members, Luciano
27 and Sean Jeffries also had a duty of full and accurate disclosure to the HOA and its members.
28 Finally, as the persons and entities with exclusive knowledge of material information about

1 the condition of the Millennium Tower not available to the HOA, including the Tower's
2 excessive vertical and differential settlement, Sean Jeffries, and Luciano owed a duty of
3 disclosure to the HOA and its members.

4 221. On information and belief, the HOA alleges that despite owing a duty of
5 disclosure to the HOA, Sean Jeffries and Luciano intentionally failed to disclose certain facts
6 regarding the excessive vertical and differential settlement of the Millennium Tower and
7 instead actively concealed those facts for as long as possible.

8 222. Sean Jeffries, and Luciano knew that the Tower was originally predicted to
9 sink no more than 4 to 6 inches over its lifetime. Sean Jeffries, and Luciano also knew that
10 the predicted lifetime settlement of the Tower was later revised to 10.3 to 12.3 inches.

11 223. On information and belief, Sean Jeffries and Luciano received monitoring data
12 on the settlement building continuously over a period of years, starting as early as 2010. Arup
13 has prepared at least 58 memoranda to the TJPA providing updates on settlement monitoring
14 through 2016. On information and belief, this same settlement data was sent by TJPA to Sean
15 Jeffries and Luciano, who in turn transmitted the settlement data to DeSimone for evaluation.
16 DeSimone then prepared its own analysis of the Arup data, summarized in numerous
17 memoranda that were addressed to Steven Hood of Millennium Partners.⁵⁰

18 224. The DeSimone memoranda, based upon the Arup monitoring data and
19 produced directly to Sean Jeffries and Luciano, unequivocally show excessive vertical and
20 differential settlement of the Millennium Tower. For example, a DeSimone Memorandum
21 dated December 14, 2012, demonstrates the Tower had already sunk over 11 inches.

22 225. Yet the HOA was not made aware of the true nature of the wrongful conduct
23 and the full extent to which the Tower was experiencing excessive vertical and differential
24 settlement until 2016. Sean Jeffries, and Luciano failed to disclose to the HOA before 2016
25 that the Tower had exceeded the original predicted lifetime settlement range of 4 to 6 inches

26 ⁵⁰ See, e.g., Memorandum from Nicolas Rodrigues to Steven Hood (Millennium Partners) re: 301
27 Mission Street - Settlement Monitoring (review of most recent settlement data provided by
28 Millennium Partners to DeSimone) (Dec. 13, 2013); Email from Brian Dykes (TJPA) to Steven
Hood Re: Instrument Monitoring (attaching June 28, 2013 Arup Memorandum Re: Manually
Read Inclinometer Update) (July 16, 2013).

1 as of January 2009, and Sean Jeffries and Luciano also failed to disclose to the HOA before
2 2016 that the Tower had already exceeded the revised predicted maximum lifetime settlement
3 of 12.3 inches.

4 226. As of the signing of the First Amendment to the Easement Amendment, Sean
5 Jeffries, and Luciano also knew that the TJPA's construction activities at the site of the
6 Transit Center would likely cause additional vertical and differential settlement of the Tower
7 and the Podium, and potentially other damages. As of early 2014, Sean Jeffries, and Luciano
8 also knew that the TJPA's construction activities at the site of the Transit Center had already
9 caused vertical and differential settlement of the Tower and the Podium, damage to the
10 Garage, water intrusion, and other damages.

11 227. On information and belief, the HOA alleges that Sean Jeffries and others,
12 including representatives of the TJPA, signed a confidentiality agreement on March 17, 2010
13 to conceal from the HOA and others the extent of the settlement and that the TJPA's
14 construction activities at the site of the Transit Center, adjacent to the Millennium Tower,
15 would likely cause additional vertical and differential settlement of the Tower and the
16 Podium.

17 228. On information and belief, the HOA alleges that Sean Jeffries, in a further
18 attempt to conceal from the HOA for as long as possible that the Tower was settling vertically
19 and differentially in excess of the design specifications, signed the Amended Easement
20 Agreement with the TJPA. Because Sean Jeffries signed the Amended Easement Agreement
21 with the TJPA, Sean Jeffries or other employees of the Millennium Defendants, and not the
22 HOA, began receiving monitoring data collected by the TJPA, which further revealed that the
23 Tower was settling vertically and differentially in excess of the design specifications,
24 including the revised expected maximum settlement. Sean Jeffries did not disclose this data
25 to the HOA, but instead concealed it.

26 229. Sean Jeffries knew that the Millennium Tower was settling differentially at
27 least by March 15, 2010, if not earlier, when Sean Jeffries and others employees of
28 Millennium Defendants received monitoring data from Arup that discussed differential

1 settlement. Despite knowing of the differential settlement and the detrimental impact of the
2 TJPA's activities on the Millennium Tower, Sean Jeffries and Luciano failed to disclose to the
3 HOA the full extent of the wrongful conduct and its effects before 2016, including that the
4 TJPA's construction activities at the site of the Transit Center had contributed to the excessive
5 vertical and differential settlement of the Tower and the Podium far in excess of the design
6 specifications, damage to the Garage, water intrusion, and other damages.

7 230. In his capacity as an executive for the Millennium Defendants, Luciano knew
8 of the vertical and differential settlement of the Tower and Podium and other ongoing
9 damages to the Property resulting from the design and construction defects and the TJPA's
10 activities. Luciano, a Vice President at MPM and a member of the HOA's Board from
11 approximately 2009 through 2016, wrongfully failed to disclose to the HOA and its members
12 all material facts regarding the Tower and instead actively concealed them, in violation of his
13 duty of disclosure to the HOA.

14 231. Sean Jeffries further represented on February 28, 2014 to the HOA that he was
15 not "aware to date of any information that gives us concern for the safety of the building or
16 any significant impact on the structure." This representation was demonstrably false, which
17 Sean Jeffries knew at the time he made it, as Sean Jeffries knew that the Tower had already
18 exceeded the revised upper limit of the total expected lifetime settlement. In a December 13,
19 2013 Memorandum to Millennium Partners, DeSimone observed that the total measured
20 settlement was "now officially outside the maximum predicted value provided by Treadwell
21 and Rollo (Langan)."

22 232. In failing to disclose these material facts while instead making misleading
23 statements and only partially disclosing the true state of the Tower, Sean Jeffries and Luciano
24 intended to deceive the HOA, knowing that the HOA could not and would not take corrective
25 action to address problems of which the HOA was not aware.

26 233. In reliance on Sean Jeffries and Luciano's misrepresentations and failures to
27 disclose, the HOA did not take early corrective action to prevent future damage.

28 234. The HOA's reliance on the fraudulent concealment of Sean Jeffries, and

1 Luciano caused damages to the HOA, including by diminishing the value of the common
2 areas of the Millennium Tower.

3 235. Because Sean Jeffries and Luciano intentionally withheld information from the
4 HOA, Sean Jeffries and Luciano necessarily possess full information concerning the facts of
5 their own fraudulent acts.

6 236. As a direct and proximate result of the fraudulent conduct of Sean Jeffries and
7 Luciano, the HOA has suffered and will continue to suffer damages in an amount to be proved
8 at trial.

9 237. Because the conduct of Sean Jeffries and Luciano was malicious, oppressive,
10 and fraudulent, and taken in knowing disregard of their legal duties, punitive damages should
11 be awarded. Sean Jeffries and Luciano knew that the construction and design of the
12 Millennium Tower was deficient and that the Millennium Tower was suffering from
13 excessive vertical and differential settlement, and consciously and recklessly disregarded the
14 probability of injury to residents of Millennium Tower units and to the common areas of the
15 Millennium Tower by developing and marketing the Millennium Tower despite knowing that
16 its construction methods and design plans were deficient, and by continuing to market the
17 units after they received information that the building was sinking and tilting.

18 **B. Secondary Liability**

19 238. In engaging in these acts of fraudulent concealment, Sean Jeffries was acting
20 on behalf of MSD, for which he is an agent. Sean Jeffries was acting as the agent of MSD
21 and made the above misrepresentations in the scope of his authority as an agent of MSD.

22 239. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is
23 the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and made
24 these misrepresentations in the scope of his authority as an agent of MSH and/or within the
25 scope of this employment as an employee of MSH.

26 240. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is
27 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM
28 and his conduct was in the scope of his authority as an agent of MPM and/or within the scope

1 of this employment as an employee of MPM.

2 241. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he
3 is an agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP
4 LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within
5 the scope of this employment as an employee of MP LLC.

6 242. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is
7 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and
8 his conduct was in the scope of his authority as an agent of MPI and/or within the scope of
9 this employment as an employee of MPI.

10 243. In engaging in these acts of fraudulent concealment, Luciano was acting on
11 behalf of MSD, for which he is an agent and/or principal. Luciano was acting as the agent
12 and/or employee of MSD and his conduct was in the scope of his authority as an agent of
13 MSD and/or within the scope of this employment as an employee of MSD.

14 244. In the alternative, Luciano was acting on behalf of MSH, for which he is the
15 agent and/or principal. Luciano was acting as the agent and/or employee of MSH and his
16 conduct was in the scope of his authority as an agent of MSH and/or within the scope of this
17 employment as an employee of MSH.

18 245. In the alternative, Luciano was acting on behalf of MPM, for which he is the
19 Tower's Property Manager. Luciano was acting as the agent and/or employee of MPM and
20 his conduct was in the scope of his authority as an agent of MPM and/or within the scope of
21 this employment as an employee of MPM.

22 246. In the alternative, Luciano was acting on behalf of MP LLC, for which he is
23 the agent and/or principal. Luciano was acting as the agent and/or employee of MP LLC and
24 his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope
25 of this employment as an employee of MP LLC.

26 247. In the alternative, Luciano was acting on behalf of MPI, for which he is the
27 agent and/or principal. Luciano was acting as the agent and/or employee of MPI and his
28 conduct was in the scope of his authority as an agent of MPI and/or within the scope of this

1 employment as an employee of MPI.

2 248. Alternatively, the Millennium Defendants are secondarily liable for this cause
3 of action pursuant to the theories described in §IV *supra*.

4 249. The Millennium Founders are secondarily liable for this cause of action
5 pursuant to the theories described in §IV *supra*.

6 250. Sean Jeffries, Luciano, the Millennium Defendants, the Millennium Founders,
7 and Does 1 Through 100, Inclusive are all jointly and severally liable for the HOA's damages
8 caused by defendants' fraudulent concealment.

9 **NINTH CAUSE OF ACTION**

10 **Breach of Fiduciary Duty Against Sean Jeffries, Luciano, and MPI (directly liable);**
11 **Millennium Defendants (all indirectly liable based on agency and/or respondeat superior**
12 **and all secondarily liable based on theories described in §IV); and Millennium Founders**
13 **(all secondarily liable based on theories described in §IV), and Does 1 Through 100,**

14 **Inclusive**

15 251. The HOA re-alleges and incorporates by reference Paragraphs 1 through 250
16 above as if fully set forth herein.

17 **A. Direct Liability**

18 252. MPI owed a fiduciary duty to the HOA during the period when it was a
19 member of the HOA's Board of Directors, which occurred during the period from the creation
20 of the HOA Board in 2009 through at least part of 2011. For example, at the March 30, 2010
21 HOA meeting, all five members present at the Board meeting were officers, directors, or
22 employees of MPI. The following individuals employed by MPI were all on the HOA's
23 Board during the period from 2009 through at least part of 2011: Richard Baumert, Diana
24 Nelson, Maijken Johnson, Carrie Leung, John Luciano, Jeff Jeffries, and Craig Mooney. In
25 addition, each of these board members represented publicly that they were employed by
26 "Millennium Partners," which referred to MPI. Each was acting on behalf of MPI when
27 acting as board members of the HOA.

28 253. MPI knew that the building was settling excessively and differentially by

1 March 15, 2010, if not earlier. Yet MPI breached its fiduciary duties to the Board by, among
2 other acts and omissions, failing to maintain sufficient reserve and operating funds to
3 maintain and repair the known defects; failing to act in the best interests of the HOA by
4 immediately seeking to repair known defects and halt ongoing damage to the building; and by
5 acting in the best interests of MPI, not the HOA, through the concealment of information
6 about the excessive and differential settlement from homeowners and other Board members.
7 In so acting, MPI breached its fiduciary duties to the Board, including but not limited to its
8 duties of care, good faith and fair dealing, and loyalty.

9 254. As designated contact for receipt of monitoring data from the TJPA, Sean
10 Jeffries owed a fiduciary duty to the HOA, its board, and its members.

11 255. Despite owing this fiduciary duty, Sean Jeffries wrongfully failed to disclose to
12 the HOA and its members all material facts regarding the substantial defects at the
13 Millennium Tower. Such failure constituted a breach of his fiduciary duties to the Board,
14 including but not limited to a breach of his duties of care, good faith and fair dealing, and
15 loyalty to the HOA.

16 256. As a member of the HOA Board, Luciano owed a fiduciary duty to the HOA
17 and its members. Board members are expected to act with good judgment, in good faith, and
18 in the best interests of their organization.

19 257. Despite owing such a fiduciary duty, Luciano wrongfully failed to disclose to
20 the HOA and its members all material facts regarding the substantial defects at the
21 Millennium Tower. Such failure constituted a breach of his fiduciary duties to the Board,
22 including but not limited to a breach of his duties of care, good faith and fair dealing, and
23 loyalty to the HOA.

24 258. As a direct and proximate result of Sean Jeffries, Luciano and MPI's breaches,
25 the HOA has suffered and will continue to suffer damages in an amount to be proved at trial.

26 259. The HOA also seeks punitive or exemplary damages because Sean Jeffries,
27 Luciano and MPI's conduct was malicious, oppressive, and fraudulent, and taken in knowing
28 disregard of their legal duties. Sean Jeffries, Luciano, and MPI knew that the construction

1 and design of the Millennium Tower was deficient and that the Millennium Tower was
2 suffering from excessive vertical and differential settlement, and consciously and recklessly
3 disregarded the probability of injury to future residents of Millennium Tower units and to the
4 common areas of the Millennium Tower by developing and marketing the Millennium Tower
5 despite knowing that its construction methods and design plans were deficient, and by
6 continuing to market the units after they received information that the building was sinking
7 and tilting.

8 **B. Secondary Liability**

9 260. In engaging in this breach of fiduciary duty, Sean Jeffries was acting on behalf
10 of MSD, for which he is the agent. Sean Jeffries was acting as the agent of MSD and his
11 conduct was in the scope of his authority as an agent of MSD.

12 261. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is
13 the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and his
14 conduct was in the scope of his authority as an agent of MSH and/or within the scope of this
15 employment as an employee of MSH.

16 262. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is
17 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM
18 and his conduct was in the scope of his authority as an agent of MPM and/or within the scope
19 of this employment as an employee of MPM.

20 263. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he
21 is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP
22 LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within
23 the scope of this employment as an employee of MP LLC.

24 264. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is
25 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and
26 his conduct was in the scope of his authority as an agent of MPI and/or within the scope of
27 this employment as an employee of MPI.

28 265. In engaging in this breach of fiduciary duty, Luciano was acting on behalf of

MSD, for which he is the agent. Luciano was acting as the agent of MSD and his conduct was in the scope of his authority as an agent of MSD.

266. In the alternative, Luciano was acting on behalf of MSH, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MSH and his conduct was in the scope of his authority as an agent of MSH and/or within the scope of this employment as an employee of MSH.

267. In the alternative, Luciano was acting on behalf of MPM, for which he is the Tower's Property Manager. Luciano was acting as the agent and/or employee of MPM and his conduct was in the scope of his authority as an agent of MPM and/or within the scope of this employment as an employee of MPM.

268. In the alternative, Luciano was acting on behalf of MP LLC, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MP LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope of this employment as an employee of MP LLC.

269. In the alternative, Luciano was acting on behalf of MPI, for which he is the agent and/or principal. Luciano was acting as the agent and/or employee of MPI and his conduct was in the scope of his authority as an agent of MPI and/or within the scope of this employment as an employee of MPI.

270. In the alternative, the Millennium Defendants are indirectly liable based on secondary liability theories described in §IV *supra*.

271. In addition, the Millennium Founders are indirectly liable based on secondary liability theories described in §IV *supra*.

272. Sean Jeffries, Luciano, MPI, the Millennium Defendants, the Millennium Founders, and Does 1 through 100, Inclusive are all jointly and severally liable for the HOA's damages caused by defendants' breach of fiduciary duty.

TENTH CAUSE OF ACTION

Violation of Business and Professions Code § 17200 *et seq.* Against Sean Jeffries Luciano, and Millennium Defendants (all directly liable); Millennium Defendants (all

indirectly liable based on agency and/or respondeat superior and all secondarily liable based on theories described in §IV); and Millennium Founders (all indirectly liable based on all secondarily liable based on theories described in §IV), and Does 1 Through 100, Inclusive

273. The HOA re-alleges and incorporates by reference Paragraphs 1 through 272 above as if fully set forth herein.

A. Direct Liability

274. California Business and Professions Code section 17200 *et seq.* prohibit unfair competition, including any unlawful, unfair, or fraudulent business act or practice.

275. The conduct of the Millennium Defendants, Sean Jeffries, and Luciano alleged herein constitutes unlawful, unfair, or fraudulent business acts or practices.

276. The Millennium Defendants, Sean Jeffries, and Luciano's unlawful, unfair, and fraudulent business acts and practices included a pattern of violations of California Civil Code section 1134(b) in that they repeatedly failed to disclose the nature and extent of the vertical and differential settlement of the Millennium Tower to the HOA or its members.

277. Sean Jeffries' unlawful, unfair, or fraudulent business acts or practices include his misrepresentations in the course of his dealings and communications with the HOA Board, and his failure to disclose the differential settlement of the Millennium Tower to the HOA or its members.

278. Luciano's unlawful, unfair, or fraudulent business acts or practices include his misrepresentations in the course of his dealings and communications with the HOA Board, and his failure to disclose the differential settlement of the Millennium Tower to the HOA or its members.

279. MPI's unlawful, unfair, or fraudulent business acts or practices include its failure to disclose the differential settlement of the Millennium Tower to the HOA or its members in breach of its fiduciary duty.

280. As a direct and proximate result of the conduct of the Millennium Defendants, Sean Jeffries and Luciano constituting unfair, unlawful, or fraudulent business practices, the

1 HOA has suffered and will continue to suffer damages entitling it to restitution in an amount
2 to be proved at trial.

3 281. The HOA also seeks an order that Sean Jeffries, John Luciano, and the
4 Millennium Defendants, be required to provide restitution to the HOA to restore money or
5 property acquired by means of the Millennium Defendants, Sean Jeffries and Luciano's
6 unfair, unlawful, or fraudulent practices and that resulted in injury to the common areas of the
7 Millennium Tower.

8 **B. Secondary Liability**

9 282. Sean Jeffries was acting on behalf of MSD, for which he is the agent. Sean
10 Jeffries was acting as the agent of MSD and his conduct was in the scope of his authority as
11 an agent of MSD.

12 283. In the alternative, Sean Jeffries was acting on behalf of MSH, for which he is
13 the Vice President. Sean Jeffries was acting as the agent and/or employee of MSH and his
14 conduct was in the scope of his authority as an agent of MSH and/or within the scope of this
15 employment as an employee of MSH.

16 284. In the alternative, Sean Jeffries was acting on behalf of MPM, for which he is
17 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPM
18 and his conduct was in the scope of his authority as an agent of MPM and/or within the scope
19 of this employment as an employee of MPM.

20 285. In the alternative, Sean Jeffries was acting on behalf of MP LLC, for which he
21 is the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MP
22 LLC and his conduct was in the scope of his authority as an agent of MP LLC and/or within
23 the scope of this employment as an employee of MP LLC.

24 286. In the alternative, Sean Jeffries was acting on behalf of MPI, for which he is
25 the agent and/or principal. Sean Jeffries was acting as the agent and/or employee of MPI and
26 his conduct was in the scope of his authority as an agent of MPI and/or within the scope of
27 this employment as an employee of MPI.

28 287. Luciano was acting on behalf of MSD, for which he is the agent. Luciano was

1 acting as the agent of MSD and his conduct was in the scope of his authority as an agent of
2 MSD.

3 288. In the alternative, Luciano was acting on behalf of MSH, for which he is the
4 agent and/or principal. Luciano was acting as the agent and/or employee of MSH and his
5 conduct was in the scope of his authority as an agent of MSH and/or within the scope of this
6 employment as an employee of MSH.

7 289. In the alternative, Luciano was acting on behalf of MPM, for which he is the
8 Tower's Property Manager. Luciano was acting as the agent and/or employee of MPM and
9 his conduct was in the scope of his authority as an agent of MPM and/or within the scope of
10 this employment as an employee of MPM.

11 290. In the alternative, Luciano was acting on behalf of MP LLC, for which he is
12 the agent and/or principal. Luciano was acting as the agent and/or employee of MP LLC and
13 his conduct was in the scope of his authority as an agent of MP LLC and/or within the scope
14 of this employment as an employee of MP LLC.

15 291. In the alternative, Luciano was acting on behalf of MPI, for which he is the
16 agent and/or principal. Luciano was acting as the agent and/or employee of MPI and his
17 conduct was in the scope of his authority as an agent of MPI and/or within the scope of this
18 employment as an employee of MPI.

19 292. In the alternative, the Millennium Defendants indirectly liable based on
20 secondary liability theories described in §IV *supra*.

21 293. In addition, the Millennium Founders indirectly liable based on secondary
22 liability theories described in §IV *supra*.

23 294. Sean Jeffries, Luciano, the Millennium Defendants, the Millennium Founders,
24 and Does 1 Through 100, Inclusive are all jointly and severally liable for the HOA's damages
25 caused by defendants' violations of Business & Professions Code section 17200 *et seq*.

26 **ELEVENTH CAUSE OF ACTION**

27 **Inverse Condemnation Against the TJPA**

28 295. The HOA re-alleges and incorporates by reference Paragraphs 1 through 294

1 above as if fully set forth herein.

2 296. Inverse condemnation claims arise under Article I, section 19, of the California
3 Constitution, which provides that “[p]rivate property may be taken or damaged for a public
4 use and only when just compensation ... has first been paid to ... the owner.” Cal. Const. art.
5 I, § 19.

6 297. The construction of the Transit Center and Support System substantially
7 affected the support, safety, and integrity of the Millennium Tower. The soil beneath the
8 Millennium Tower has been destabilized by the construction of the Transit Center and
9 Support System, and the Property has suffered from material movement and/or settlement,
10 which is expected to continue for the foreseeable future. This movement and settlement is
11 both vertical and differential and has resulted, and will continue to result, in cracks in the
12 foundations, slabs, and walls of the Millennium Tower, water intrusion through foundation
13 walls, displacement of sewer and other utility connections, and other damage.

14 298. The TJPA’s construction activities at the site of the Transit Center, adjacent to
15 the Millennium Tower, have caused vertical and differential settlement of the Tower and
16 Podium, damage to the Garage, water intrusion, and other damages.

17 299. Construction of the Transit Center is ongoing such that harm to the Millennium
18 Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm
19 to the Millennium Tower is unknown and ongoing.

20 300. The TJPA’s construction of the Transit Center is a substantial and proximate
21 cause of the vertical and differential settlement of the Tower and Podium, damage to the
22 Garage, water intrusion, and other damages.

23 301. The HOA has suffered a taking of its property by the TJPA entitling the HOA
24 to just compensation under Article I, section 19, of the California Constitution and the Fifth
25 and Fourteenth Amendments to the United States Constitution.

26 302. The HOA is also entitled to costs, disbursements, and expenses, including
27 attorney, appraisal, and engineering fees pursuant to Code of Civil Procedure Section 1036.
28

TWELFTH CAUSE OF ACTION

Trespass Against the TJPA and the Salesforce Tower Defendants

303. The HOA re-alleges and incorporates by reference Paragraphs 1 through 302 above as if fully set forth herein.

304. By its construction of the shoring wall, buttress wall, and related construction activities, the TJPA has intentionally, recklessly, or negligently entered the Millennium Tower or negligently caused construction-related objects to enter the Millennium Tower.

305. This entry into the Millennium Tower exceeded the TJPA's permission to enter the Property.

306. The TJPA's conduct damaged the HOA because it was a substantial factor in causing vertical and differential settlement of the Millennium Tower, as well as cracks in the foundations, slabs, and walls of the Tower, Podium and Garage, water intrusion through foundation walls, displacement of sewer and other plumbing pipes, and other damage.

307. Construction of the Transit Center is ongoing such that harm to the Millennium Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to the Millennium Tower is unknown and ongoing.

308. By its construction of the Salesforce Tower, including the dewatering, excavation, and installation of tiebacks and monitoring equipment, including activities on the Property itself, the Salesforce Tower Defendants have intentionally, recklessly, or negligently entered the Millennium Tower or negligently caused construction-related objects to enter the Millennium Tower and the Property. Specifically, through their construction activities, the Salesforce Tower Defendants set in motion a force that "extende[d] its energy to the plaintiff's premises to its material injury." *Elton v. Anheuser-Busch Bev. Group, Inc.*, 50 Cal. App. 4th Dist. 1301, 1306 (1996).

309. The HOA did not give the Salesforce Tower Defendants permission to enter the Property.

310. The Salesforce Tower Defendants' conduct damaged the HOA because it was a substantial factor in causing vertical and differential settlement of the Millennium Tower, as

1 well as cracks in the foundations, slabs, and walls of the Tower, Podium and Garage, water
 2 intrusion through foundation walls, displacement of sewer and other plumbing pipes, and
 3 other damage.

4 311. Construction of the Salesforce Tower is ongoing such that harm to the
 5 Millennium Tower is continuous and ongoing. Accordingly, the full extent of any actual or
 6 potential harm to the Millennium Tower is unknown and ongoing.

7 312. As a direct and proximate result of the TJPA and the Salesforce Tower
 8 Defendants' wrongful conduct, the HOA has suffered and will continue to suffer damages in
 9 an amount to be proved at trial.

10 **THIRTEENTH CAUSE OF ACTION**

11 **Nuisance Against the TJPA and the Salesforce Tower Defendants**

12 313. The HOA re-alleges and incorporates by reference Paragraphs 1 through 312
 13 above as if fully set forth herein.

14 314. The TJPA's construction of the Transit Center and the Salesforce Tower
 15 Defendants' construction of the Salesforce Tower has caused or contributed to the sinking and
 16 tilting of the Millennium Tower, and the other damages alleged herein.

17 315. The TJPA's and the Salesforce Tower Defendants' use and maintenance of
 18 their properties has interfered with and continues to interfere with the HOA's and the HOA's
 19 members' use and enjoyment of the Millennium Tower common areas and has damaged and
 20 continues to damage the Millennium Tower. The excessive vertical and differential
 21 settlement is continuing and keeps adversely impacting the Millennium Tower, as alleged
 22 above.

23 316. The TJPA's activities in constructing the Transit Center and the Salesforce
 24 Tower Defendants' construction of the Salesforce Tower have substantially contributed to the
 25 Millennium Tower's excessive and differential settlement, as well as cracks in the
 26 foundations, slabs, and walls of the Tower, Podium and Garage, water intrusion through
 27 foundation walls, displacement of sewer and other plumbing pipes, and other damage and
 28 thereby have resulted in a diminution in the Millennium Tower's value.

1 317. Construction of the Transit Center and the Salesforce Tower is ongoing such
2 that harm to the Millennium Tower is continuous and ongoing. Accordingly, the full extent of
3 any actual or potential harm to the Millennium Tower is unknown and ongoing.

4 318. The substantial invasion of the HOA's interest in the use and enjoyment of the
5 common areas is unreasonable.

6 319. As a result of the TJPA and the Salesforce Tower Defendants' construction
7 activities, the HOA has suffered damages as set forth herein.

8 320. As a direct and proximate result of the TJPA and the Salesforce Tower
9 Defendants' wrongful conduct, the HOA has suffered and will continue to suffer damages in
10 an amount to be proved at trial.

11 321. The TJPA and the Salesforce Tower Defendants are jointly and severally liable
12 for the HOA's damages resulting from defendants' nuisance.

13 **FOURTEENTH CAUSE OF ACTION**

14 **Violation of Statutory Duty to Provide Subjacent and Lateral Support** 15 **Pursuant to California Civil Code § 832 Against the TJPA, the Salesforce Tower** 16 **Defendants, and Does 1 Through 100, Inclusive**

17 322. The HOA re-alleges and incorporates by reference Paragraphs 1 through 321
18 above as if fully set forth herein.

19 323. The Millennium Tower receives lateral and subjacent support from the soil
20 underlying the Transit Center, which adjoins the Millennium Tower to the southeast, and the
21 soil underlying the Salesforce Tower and Fremont Street, which adjoins the Millennium
22 Tower to the southwest.

23 324. The TJPA directed excavation and dewatering work at the Transit Center, by
24 and through their agents and/or employees.

25 325. The TJPA's excavation and dewatering work, and the manner in which this
26 work was undertaken, was deliberately designed and constructed for the purpose of
27 constructing improvements at the Transit Center.
28

1 326. The Salesforce Tower Defendants directed excavation, drilling, and dewatering
2 work, and have exerted lateral forces on the soil under and adjacent to the Millennium Tower,
3 by and through their agents and/or employees.

4 327. The Salesforce Tower Defendants' excavation, drilling, and dewatering work,
5 together with their work resulting in the exertion of lateral forces on the soil underneath the
6 Tower, and the manner in which this work was undertaken, was deliberately completed for
7 the purpose of constructing improvements at the Salesforce Tower.

8 328. The excavations at the Transit Center and Salesforce Tower are deeper than the
9 standard depth of foundations as defined by statute.

10 329. On information and belief, the HOA alleges that both the TJPA and the
11 Salesforce Tower Defendants failed to exercise ordinary care and skill and take reasonable
12 precautions to sustain the adjoining land, and the land underneath the Property as required by
13 California Civil Code Section 832.

14 330. As a direct and proximate cause of the TJPA's excavation and dewatering at
15 the Transit Center, the Millennium Tower was deprived of lateral and subjacent support. The
16 TJPA's construction, excavation, and dewatering resulted in harm to the Millennium Tower,
17 and to the Millennium Tower experiencing differential and vertical settlement beyond even
18 the revised maximum settlement prediction provided by Treadwell & Rollo in 2009 of 10.3-
19 12.3 inches,⁵¹ as well as in cracks in the foundations, slabs, and walls of the Tower, Garage
20 and Podium, water intrusion through foundation walls, displacement of sewer and other
21 plumbing pipes, and other damage.

22 331. Additionally, as a direct and proximate cause of the Salesforce Tower
23 Defendants' excavation, drilling, dewatering, and exertion of lateral forces on the soil under
24 the Tower and the Property, the Millennium Tower was further deprived of lateral and
25 subjacent support. The Salesforce Tower Defendants' construction, excavation, dewatering,
26 and exertion of lateral forces resulted in harm to the Millennium Tower, and to the
27 Millennium Tower experiencing further differential and vertical settlement beyond even the

28 ⁵¹ Letter from Treadwell & Rollo to DBI (Feb. 19, 2009).

1 revised maximum settlement prediction provided by Treadwell & Rollo in 2009 of 10.3-12.3
 2 inches, as well as in cracks in the foundations, slabs, and walls of the Tower, Garage and
 3 Podium, water intrusion through foundation walls, displacement of sewer and other plumbing
 4 pipes, and other damage.

5 332. Construction of the Transit Center and Salesforce Tower is ongoing such that
 6 harm to the Millennium Tower is continuous and ongoing. Accordingly, the full extent of any
 7 actual or potential harm to the Millennium Tower is unknown and ongoing.

8 333. As a direct and proximate result of the TJPA's and the Salesforce Tower
 9 Defendants' breach of duty pursuant to Section 832, the HOA has suffered and will continue
 10 to suffer damages in an amount to be proved at trial.

11 334. The TJPA and the Salesforce Tower Defendants are jointly and severally liable
 12 for the HOA's damages resulting from defendants' denial of subjacent and lateral support to
 13 the Millennium Tower.

14 **FIFTEENTH CAUSE OF ACTION**

15 **Petition for Writ of Mandate to Compel Enforcement of CEQA Mitigation Measures** 16 **Against TJPA**

17 335. The HOA re-alleges and incorporates by reference Paragraphs 1 through 334
 18 above as if fully set forth herein.

19 336. The FEIR and Mitigation Monitoring and Reporting Program set forth the
 20 enforceable mitigation measures that TJPA adopted under CEQA to avoid significant impacts
 21 on the environment, and the basic framework through which the enforceable mitigation
 22 measures will be monitored to ensure implementation. These mitigation measures included
 23 the obligation to monitor adjacent buildings for movement and take immediate action to
 24 control the movement if any is detected.

25 337. TJPA is responsible for both the implementation and monitoring of Mitigation
 26 Measures SG-1 through SG-5, as set forth in the Mitigation Monitoring and Reporting
 27 Program.

28 338. Despite TJPA's mandatory duty to implement, monitor, and enforce mitigation

1 pursuant to the Mitigation Monitoring and Reporting Program, TJPA has failed to take
2 required procedures or corrective measures to prevent the effects of the construction of the
3 Transit Center, and that failure has led to an increased rate and increased amount of settlement
4 of the Tower.

5 339. Construction of the Transit Center is ongoing. As such, any harm to the Tower
6 from the Transit Center is continuous and repeated, and will remain so until impacts to the
7 Tower resulting from Transit Center-related construction have stabilized. Until then, the full
8 extent of any actual or potential harm to the Tower resulting from vertical or differential
9 settlement is unknown and ongoing.

10 340. TJPA's failures as alleged herein breached mandatory duties and were not
11 discretionary acts.

12 341. TJPA's duty to take corrective action is mandatory and subject to a writ of
13 mandate notwithstanding any discretionary component in the manner in which the agency
14 performs its mandatory duty. *See Coachella Valley Unified Sch. Dist. v. State of Cal.*, 176
15 Cal. App. 4th 93, 113 (2009) ("And, while a party may not invoke the remedy to force a
16 public entity to exercise discretionary powers in any particular manner, if the entity refuses to
17 act, mandate is available to compel the exercise of those discretionary powers in some way.");
18 *L. A. Cty. Emps. Ass'n, Local 660 v. Cty. of L.A.*, 33 Cal. App. 3d 1, 8 (1973) ("While
19 mandamus will not lie to compel governmental officials to exercise their discretionary powers
20 in a particular manner, it will lie to compel them to exercise them in some manner.");
21 Mandate is appropriate to compel TJPA to exercise discretion and take corrective action as
22 required by law.

23 342. The HOA has a direct and beneficial interest in ensuring that TJPA performs
24 the Mitigation Measures, which were intended to protect the Tower, and has exhausted all
25 other available remedies.

26 343. The HOA has a beneficial right to TJPA's performance of its duties based on
27 the HOA's interest in mitigating further harmful effects to the Tower from subsidence and
28 issues related to the removal of lateral and subjacent support due to neighboring construction

1 and dewatering activities.

2 344. The HOA seeks only equitable, non-monetary relief as to this cause of action.
 3 The HOA has no plain, speedy, and adequate remedy at law, in that unless this Court issues a
 4 writ mandating TJPA to undertake the obligations and responsibilities it is charged with under
 5 relevant local and state law, there is no assurance TJPA will perform its mandatory duties.

6 345. A dispute has arisen between the HOA and TJPA in that the HOA believes and
 7 contends, for the reasons set forth above, that TJPA's actions as set forth above were unlawful
 8 and invalid. The HOA is informed and believes, and on that basis contends, that TJPA
 9 contends in all respects to the contrary.

10 **IX. PRAYER FOR RELIEF**

11 **WHEREFORE, Plaintiff prays for relief as follows:**

- 12 1. For compensatory and special damages, according to proof at trial but believed to
 13 exceed Two Hundred Million Dollars (\$200,000,000);
- 14 2. For interest thereon at the maximum legal rate;
- 15 3. For statutory damages as set forth in California Civil Code section 895 *et seq.*;
- 16 4. For expert fees and investigative costs regarding the nature and extent of the
 17 violations of standards, defective conditions, resulting damages, and appropriate method of
 18 repairing these damages and defective conditions in accordance with *Stearman v. Centex Homes*,
 19 78 Cal. App. 4th 611 (2000), according to proof at trial;
- 20 5. For an order that the Millennium Defendants be required to disgorge the profits
 21 they have wrongfully obtained and provide the HOA restitution;
- 22 6. For injunctive relief to prevent the defendants' conduct that is continuing to cause
 23 damage to the HOA and to the Tower and is a nuisance, and to remedy and repair the Tower's
 24 defects;
- 25 7. For cost of relocation, loss of use, substitute housing, and mitigation expenses;
- 26 8. For punitive and/or statutory exemplary damages;
- 27 9. For costs of suit and reasonable attorneys' fees incurred herein; and
- 28 10. For an award holding all defendants jointly and severally liable for all of the

HOA's damages, costs, fees, and interests arising from the defendants' joint tortious conduct.

11. For a writ of mandate commanding TJPA to carry out its obligations to implement the monitoring and mitigation measures set forth in the Mitigation Monitoring and Reporting Program, including specifically Mitigation Measures SG 1, 4 and 5, under which TJPA is obligated to monitor adjacent buildings for movement, and if movement is detected, take immediate action to control the movement.

12. For any and all other relief the Court deems just and proper.

X. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all triable issues.

Dated: April 10, 2018

DANIEL M. PETROCELLI
VISION WINTER
O'MELVENY & MYERS LLP



By: _____

Daniel M. Petrocelli
Attorneys for Plaintiff

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action. I am a resident of or employed in the county where the service described below occurred. My business address is 2765 Sand Hill Road, Menlo Park, California 94025-7019.

On April 16, 2018, I served true and correct copies of the following document(s):

FIFTH AMENDED COMPLAINT FOR:

1) VIOLATION OF CAL. CIV. CODE § 895 ET SEQ.; 2) NEGLIGENCE; 3) BREACH OF EXPRESS WARRANTIES; 4) BREACH OF IMPLIED WARRANTIES; 5) STRICT LIABILITY; 6) NEGLIGENT MISREPRESENTATION; 7) FRAUDULENT MISREPRESENTATION; 8) FRAUDULENT CONCEALMENT; 9) BREACH OF FIDUCIARY DUTY; 10) VIOLATION OF CAL. BUS. & PROF. CODE § 17200 ET SEQ.; 11) INVERSE CONDEMNATION; 12) TRESPASS; 13) NUISANCE; 14) VIOLATION OF CAL. CIV. CODE § 832; AND 15) VERIFIED PETITION FOR WRIT OF MANDATE

on the following persons at the locations and/or electronic transmission address as follows:

Please see Service List below.

in the manner indicated below:

☐ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the O'Melveny & Myers LLP's office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. **A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.**

☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the O'Melveny & Myers LLP's office for sending overnight deliveries. In the ordinary course of business, the sealed envelope (&) that I placed for collection would be collected by a courier the same day.

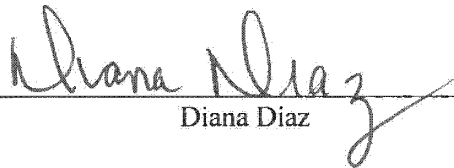
1 ☐

BY ELECTRONIC MAIL: I caused the documents to be sent to the person(s) at the electronic service address (es) listed below. Such document(s) were transmitted *via* electronic mail from the electronic address: jsantillana@omm.com ☒ in portable document format ("PDF") Adobe Acrobat or ☐ in Word document format. OR

4 ☒

BY ELECTRONIC FILING: I electronically served the above referenced document(s) through File & ServeXpress. E-Service in this action was completed on all parties listed on the service list with File & ServeXpress. This service complies with the Court's Local Rule 2.10 for allowance of documents to be voluntarily filed and served upon interested parties via File & ServeXpress E-Service System.

7
8 I declare under penalty of perjury under the laws of the State of California that the
9 above is true and correct. Executed on April 16, 2018, at Menlo Park, California.

10
11 
12 Diana Diaz

SERVICE LIST

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